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GOVERNMENT OF INDIA  
MINISTRY OF LAW

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THE  
UNREPEALED CENTRAL ACTS

WITH  
CHRONOLOGICAL TABLE AND INDEX

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VOLUME V

From 1908 to 1910, both inclusive

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( SECOND EDITION.)



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## LIST OF ABBREVIATIONS USED.

A. O. 1937	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, and the Government of India (Adaptation of Indian Laws) (Amendment) Order, 1940.
A. O. 1947	India (Adaptation of Existing Indian Laws Order, 1947.
A. O. 1948	Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
B. & O.	Bihar and Orissa.
Ben.	Bengal.
Bom	Bombay
Ch.	Chapter.
Cl.	Clause.
Coll. Stat.	Collection of Statutes relating to India.
C. P.	Central Provinces.
Gen. R. & O.	General Statutory Rules and Orders.
G. G. in C.	Governor General in Council.
G. of I.	Government of India.
Govt.	Government.
Ins.	Inserted.
L. G.	Local Government.
Mad.	Madras.
Pt.	Part.
Pun.	Punjab.
Reg.	Regulation.
Rep.	Repealed.
S.	Section.
Sch.	Schedule.
Subs.	Substituted.
U. P.	United Provinces



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# THE UNREPEALED CENTRAL ACTS VOLUME V.

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THE CODE OF CIVIL PROCEDURE, 1908.

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(Preliminary.)

ACT No. V of 1908.<sup>1</sup>

[21st March, 1908.]

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; it is hereby enacted as follows:—

## PRELIMINARY.

1. (1) This Act may be cited as the Code of Civil Procedure, 1908.
- (2) It shall come into force on the first day of January, 1909.
- (3) This section and sections 155 to 158 extend to <sup>2</sup>[all the Provinces of India]: the rest of the Code extends to the <sup>2</sup>[all the Provinces of India], except the Scheduled Districts.

Short title,  
commence-  
ment and  
extent

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1907, Pt. V, p. 179; for Report of the Select Committee, *see* *ibid.*, 1908, Pt. V, p. 35; and for Proceedings in Council, *see* *ibid.*, 1907, Pt. VI, p. 135 and *ibid.*, 1908, pp. 8, 12 and 212.

This Act has been amended in its application to—

Assam by the Civil Procedure (Assam Amendment) Act, 1941 (Assam 2 of 1941); Punjab by the Punjab Relief of Indebtedness Act, 1934 (Pun. 7 of 1934); and U. P. by the Oudh Courts Act, 1925 (U. P. 4 of 1925).

It has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and, by notification under ss. 5 and 5A of the Scheduled Districts Act, 1874 (14 of 1874), also to the following Scheduled Districts:—

- (1) The Districts of Jalpaiguri, Cachar (excluding the North Cachar Hills), Goalpara (including the Eastern Duars), Kamrup, Darrang, Nowgong (excluding the Mikir Hill Tracts), Sibsagar (excluding the Mikir Hill Tracts) and Lakhimpur (excluding the Dibrugarh Frontier Tracts): Gazette of India, 1909, Pt. I, p. 5 and *ibid.*, 1914, Pt. I, p. 1690.
- (2) The District of Darjeeling and the District of Hazaribagh, Ranchi, Palamau and Manbhum in Chota Nagpur: Calcutta Gazette, 1909, Pt. I, p. 25 and Gazette of India, 1909, Pt. I, p. 33.
- (3) The Province of Kumaon and Garhwal and the Tarai Parganas (with modifications): U. P. Gazette, 1909, Pt. I, p. 3 and Gazette of India, 1909, Pt. I, p. 31.
- (4) The Pargana of Jaunsar-Bawar in Dehra Dun and the Scheduled portion of the Mirzapur District: U. P. Gazette, 1909, Pt. I, p. 4 and Gazette of India, 1909, Pt. I, p. 32.
- (5) Coorg: Gazette of India, 1909, Pt. I, p. 32.
- (6) Scheduled Districts in the Punjab: Gazette of India, 1909, Pt. I, p. 33.
- (7) Sections 36 to 43 to all the Scheduled Districts in Madras: Gazette of India, 1909, Pt. I, p. 152.
- (8) Scheduled Districts in the C. P., except so much as is already in force and so much as authorizes the attachment and sale of immoveable property in execution of a decree, not being a decree directing the sale of such property, Gazette of India, 1909, Pt. I, p. 239.
- (9) Ajmer-Merwara, except sections 1 and 155 to 158: Gazette of India, 1909, Pt. II, p. 480.
- (10) Pargana Dhalbhum, the Municipality of Chaibassa in the Kolhan and the Porahat Estate in the District of Singhbhum: Calcutta Gazette, 1909, Pt. I, p. 453 and Gazette of India, 1909, Pt. I, p. 443.

Under section 3 (3) (a) of the Sonthal Parganas Settlement Regulation (3 of 1872), ss. 38 to 42 and 156 and rules 4 to 9 in Order XXI in the First Schedule have been declared to be in force in the Sonthal Parganas and the rest of the Code for the trial of suits referred to in section 10 of the Sonthal Parganas Justice Regulation, 1893 (5 of 1893): *see* Calcutta Gazette, 1909, Pt. I, p. 45.

It has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

<sup>2</sup> Subs. by the A. O. 1948 for "the whole of British India".

## (Preliminary.)

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions

(1) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

*Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court:

(5) "foreign Court" means a Court situate beyond the limits of <sup>1</sup>[the Provinces] which has no authority in <sup>1</sup>[the Provinces] and is not established or continued by <sup>2</sup>[the Central Government \* \* \*] :

(6) "foreign judgment" means the judgment of a foreign Court:

(7) "Government Pleader" includes any officer appointed by the <sup>4</sup>[Provincial Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:

(8) "Judge" means the presiding officer of a Civil Court:

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order:

<sup>1</sup> Subs. by the A. O. 1948 for "British India."

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>3</sup> The words "or the Crown Representative" rep. by the A. O. 1948.

<sup>4</sup> Subs. by the A. O. 1937 for "L. G."



## (Preliminary.)

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession:

(13) "moveable property" includes growing crops:

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree:

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court:

(16) "prescribed" means prescribed by rules:

(17) "public officer" means a person falling under any of the following descriptions, namely:—

(a) every Judge;

(b) every member of the Indian Civil Service;

(c) every commissioned or gazetted officer in the military, <sup>1</sup>[naval or air] forces of His Majesty <sup>2</sup>\* \* \* while serving under <sup>3</sup>[the Crown];

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of <sup>3</sup>[the Crown] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring

<sup>1</sup> Subs. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch., for "or naval".

<sup>2</sup> The words "including His Majesty's Indian Marine Service" rep. by s. 2 and Sch., *ibid.*

<sup>3</sup> Subs. by the A. O. 1937 for "the Govt".

## (Preliminary.)

offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of <sup>1</sup>[the Crown], or to make any survey, assessment or contract on behalf of <sup>1</sup>[the Crown], or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of <sup>1</sup>[the Crown], or to make, authenticate or keep any document relating to the pecuniary interests of <sup>1</sup>[the Crown], or to prevent the infraction of any law for the protection of the pecuniary interests of <sup>1</sup>[the Crown]; and

(h) every officer in the service or pay of <sup>1</sup>[the Crown], or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed", save in the case of a judgment or decree, includes stamped.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court. Subordina-  
tion of  
Courts.

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. Savings.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time in force for the recovery of rent of agricultural land from the produce of such land.

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the <sup>2</sup>[Provincial Government] \* \* \* may, by notification in the <sup>4</sup>[Official Gazette], declare that any portions Application  
of the Code  
to Revenue  
Courts.

<sup>1</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Pt. I.

<sup>4</sup> Subs. by the A. O. 1937 for "local official Gazette".

## (Preliminary.)

of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the <sup>1</sup>[Provincial Government]<sup>2</sup> \* \* \* may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

Pecuniary  
jurisdiction

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Provincial  
Small Cause  
Courts.

7. The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887, <sup>3</sup>[or under the Berar IX of 1887. Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes <sup>4</sup>[under the said Act or Law], that is to say,—

(a) so much of the body of the Code as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immoveable property, and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 <sup>5</sup>[so far as they authorise or relate to—

(i) orders for the attachment of immoveable property,

(ii) injunctions,

(iii) the appointment of a receiver of immoveable property, or

(iv) the interlocutory orders referred to in clause (e) of section

94] and

sections 96 to 112 and 115.

Presidency  
Small Cause  
Courts.

8. Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay:

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> The words "with the sanction aforesaid" rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Pt. I.

<sup>3</sup> Ins. by the Berar Laws Act, 1941 (4 of 1941), s. 2 and Sch. III.

<sup>4</sup> Subs., *ibid.*, for "under that Act".

<sup>5</sup> Subs. by the Small Cause Courts (Attachment of Immoveable Property) Act, 1926 (1 of 1926), s. 3, for "so far as they relate to injunctions and interlocutory orders".

(Preliminary. Part I.—Suits in general. Jurisdiction of the Courts and *res judicata*.)

<sup>1</sup>[Provided that—

XV of 1882.

(1) the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the <sup>2</sup>[Official Gazette], direct<sup>3</sup> that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882, and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court;

XV of 1882.

(2) all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882, shall be deemed to have been validly made.]

## PART I.

### SUITS IN GENERAL.

#### JURISDICTION OF THE COURTS AND *res judicata*.

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Courts to try all civil suits unless barred.

*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in <sup>4</sup>[the Provinces] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of <sup>4</sup>[the Provinces] established or continued by <sup>5</sup>[the Central Government \* \*] and having like jurisdiction, or before His Majesty in Council. Stay of suit.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in <sup>4</sup>[the Provinces] from trying a suit founded on the same cause of action.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially *Res judicata*

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1914 (1 of 1914), s. 2.

<sup>2</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>3</sup> For instance of such direction, *see* Calcutta Gazette, 1910, Pt. I, p. 814.

<sup>4</sup> Subs. by the A. O. 1948 for "British India".

<sup>5</sup> Subs. by the A. O. 1937 for "the G. G. in C.".

<sup>6</sup> The words "or the Crown Representative" rep. by the A. O. 1948.

(Part I.—Suits in general. Jurisdiction of the Courts and *res judicata*.)

in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

*Explanation I.*—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

*Explanation II.*—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

*Explanation III.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation IV.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation V.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

*Explanation VI.*—Where persons litigate *bonâ fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further  
suit.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

When foreign  
judgment  
not con-  
clusive.

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of <sup>1</sup>[the Provinces] in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;

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<sup>1</sup> Subs. by the A. O. 1948 for “British India”.

(Part I.—Suits in general. Jurisdiction of the Courts and res judicata.  
Place of suing.)

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in <sup>1</sup>[the Provinces].

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Presumption as to foreign judgments.

#### PLACE OF SUING.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Court in which suits to be instituted.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

Suits to be instituted where subject-matter situate.

(a) for the recovery of immoveable property with or without rent or profits,

(b) for the partition of immoveable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,

(d) for the determination of any other right to or interest in immoveable property,

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

*Explanation.*—In this section “property” means property situate in <sup>1</sup>[the Provinces].

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Suits for immoveable property situate within jurisdiction of different Courts.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

<sup>1</sup> Subs. by the A. O. 1948 for “British India”.

*(Part I.—Suits in general. Place of suing.)*

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or moveables.

19. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

*Illustrations.*

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B. may sue A either in Calcutta or in Delhi.

Other suits to be instituted where defendants reside or cause of action arises.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

*(Part I.—Suits in general. Place of suing.)*

*Explanation I.*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

*Explanation II.*—A corporation shall be deemed to carry on business at its sole or principal office in <sup>1</sup>[the Provinces] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Illustrations.*

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. Objections to jurisdiction.

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed. Power to transfer suits which may be instituted in more than one Court.

23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court. To what Court application lies.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its General power of

<sup>1</sup> Subs. by the A. O. 1948 for "British India".



(Part I.—Suits in general. Place of suing. Institution of suits.  
Summons and Discovery)

transfer and  
withdrawal.

own motion without such notice, the High Court or the District Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
  - (i) try or dispose of the same ; or
  - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or
  - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

Power of  
Provincial  
Govern-  
ment to  
transfer suits.

25. (1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the <sup>1</sup>[Provincial Government], <sup>2</sup>[which] may, by notification in the <sup>3</sup>[Official Gazette], transfer such suit, appeal or proceeding to any other High Court :

<sup>4</sup>[Provided that no suit, appeal or proceeding shall be transferred to a High Court without the consent of the Provincial Government of the Province in which that High Court has its principal seat.]

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.

#### INSTITUTION OF SUITS.

Institution  
of suits.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. .

#### SUMMONS AND DISCOVERY.

Summons to  
defendants.

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

<sup>1</sup> Subs. by the A. O. 1937 for " G. G. in C. ".

<sup>2</sup> Subs. by the A. O. 1937 for " who ".

<sup>3</sup> Subs. by the A. O. 1937 for " Gazette of India ".

<sup>4</sup> Ins. by the A. O. 1937.

## (Part I.—Suits in general. Summons and discovery.)

28. (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

29. Summonses <sup>1</sup>[and other processes] issued by any Civil or Revenue Court situate beyond the limits of <sup>2</sup>[the Provinces] may be sent to the Courts in <sup>2</sup>[the Provinces] and served as if they <sup>3</sup>[were summonses] issued by such Courts:

<sup>4</sup>[Provided that the Courts issuing such summonses <sup>1</sup>[or processes] have been established \* \* \* by the authority of the Central Government \* \* \* or that the Provincial Government <sup>7</sup>[of the Province in which such summonses or processes are] to be served has by notification<sup>5</sup> in the Official Gazette declared the provisions of this section to apply to <sup>9</sup>[such Courts]].

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

(a) issue a warrant for his arrest;

(b) attach and sell his property;

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1940 (34 of 1940), s. 2.

<sup>2</sup> Subs. by the A. O. 1948 for "British India".

<sup>3</sup> Subs. by Act 34 of 1940, s. 2, for "had been".

<sup>4</sup> Subs. by the A. O. 1937 for the original proviso.

<sup>5</sup> The words "or continued" rep. by the A. O. 1948.

<sup>6</sup> The words "or of the Crown Representative" rep. by the A. O. 1948.

<sup>7</sup> Subs. by Act 34 of 1940, s. 2, for "by whose Courts a summons is", with effect from 1st April, 1937, with the omission of the words "or processes".

<sup>8</sup> For notifications under s. 29, see Gen. R. & O., Supplementary Vol. I, pp. 748-775; and *ibid.*, Supplementary Vol. VI, pp. 236-248.

<sup>9</sup> Subs. by Act 34 of 1940, s. 2, for "Courts of the Province", with effect from 1st April, 1937.

(Part I.—Suits in general. Summons and discovery. Judgment and decree. Interest. Costs.)

- (c) impose a fine upon him not exceeding five hundred rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

#### JUDGMENT AND DECREE.

Judgment  
and decree.

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

#### INTEREST.

Interest.

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

#### COSTS.

Costs.

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

Compensa-  
tory costs in  
respect of  
false or  
vexatious  
claims or  
defences.

<sup>1</sup>[35A. (1) If in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if there-

<sup>1</sup> S. 35A was ins. by s. 2 of the Civil Procedure (Amendment) Act, 1922 (9 of 1922), which, under section 1 (2) thereof, may be brought into force in any Province by the Provincial Government on any specified date. It has been so brought into force in Bombay, Bengal, U. P., Punjab, Bihar, C. P., Assam and Orissa.

*(Part I.—Suits in general. Costs. Part II.—Execution. General.)*

after, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

IX of 1887.

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

**PART II.****EXECUTION.****GENERAL.**

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders. Application to orders.

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,— Definition of Court which passed a decree.

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein

(Part II.—Execution. General. Courts by which decrees may be executed.)

the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

COURTS BY WHICH DECREES MAY BE EXECUTED.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

39. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

42. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

43. Any decree passed by a Civil Court established in any <sup>1</sup>[area within the Provinces of India] to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of

<sup>1</sup> Subs. by the A. O. 1948 for "part of British India".

Court by which decree may be executed. Transfer of decree.

Transfer of decree to Court in another province.

Result of execution-proceedings to be certified.

Powers of Court in executing transferred decree.

Execution of decrees passed by Courts within the provinces of India.

(Part II.—Execution. Courts by which decrees may be executed.)

<sup>1</sup>[the Central Government or the Crown Representative] in <sup>2</sup>[any Indian State], may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in <sup>3</sup>[the Provinces].

In places to which this Part does not extend or in Indian States.

<sup>4</sup>[44. The Provincial Government may by notification<sup>5</sup> in the Official Gazette declare that the decrees of any Civil or Revenue Courts in any Indian State, not being Courts established or continued by the authority of the Central Government or of the Crown Representative, or any class of such decrees, may be executed in the Province as if they had been passed by Courts of <sup>6</sup>[that Province].]

Execution of decrees passed by Courts of Indian States.

<sup>6</sup>[44A. (1) Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in <sup>7</sup>[the Provinces] as if it had been passed by the District Court.

Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

*Explanation 1.*—"Superior Courts", with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham.

*Explanation 2.*—"Reciprocating territory" means any country, or territory, situated in any part of His Majesty's Dominions \* \* \* which the <sup>8</sup>[Central Government] may, from time to time, by notification in the <sup>9</sup>[Official Gazette], declare<sup>10</sup> to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any

<sup>1</sup> Subs. by the A. O. 1937 for "the G. G. in C."

<sup>2</sup> Subs. by the A. O. 1948 for "the territories of any foreign Prince or State".

<sup>3</sup> Subs. by the A. O. 1948 for "British India".

<sup>4</sup> Subs. by the A. O. 1937 for the original section.

<sup>5</sup> For notifications under s. 44, see Gen. R. & O., supplementary, Vol. I, pp. 775 to 781; and *ibid.*, supplementary Vol. VI, pp. 248 to 252.

<sup>6</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1937 (8 of 1937), s. 2.

<sup>7</sup> The words "or in India" rep. by the A. O. 1937.

<sup>8</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>9</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>10</sup> For such declarations, see Gen. R. & O., supplementary Vol. VI, pp. 252-253.

(Part II.—Execution. Courts by which decrees may be executed.  
Questions to be determined by Court executing decree.)

such territory, means such Courts as may be specified in the said notification.

*Explanation 3.*—"Decree", with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

(a) with reference to superior Courts in the United Kingdom, includes judgments given and decrees made in any Court in appeals against such decrees or judgments, but

(b) in no case includes an arbitration award, even if such award is enforceable as a decree or judgment.]

Execution of  
decrees in  
Indian  
States.

<sup>1</sup>[45. So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any Province to send a decree for execution to any Court established <sup>2</sup>\* \* by the authority of the Central Government <sup>3</sup>[in any Indian State] to which the Provincial Government has by notification in the Official Gazette declared this section to apply.]

Precepts.

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

#### QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE.

Questions to  
be deter-  
mined by the  
Court execu-  
ting decree.

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation of jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

<sup>1</sup> Subs. by the A. O. 1937 for the original s. 45.

<sup>2</sup> The word "or continued" rep. by the A. O. 1948.

<sup>3</sup> Subs. by the A. O. 1948 for "or of the Crown Representative in the territories of any foreign Prince or State".

(Part II.—Execution. Questions to be determined by Court executing decree. Limit of time for execution. Transferees and legal representatives.)

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

*Explanation.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

#### LIMIT OF TIME FOR EXECUTION.

48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve<sup>1</sup> years from—

Execution barred in certain cases.

- (a) the date of the decree sought to be executed, or,
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application: or

IX of 1908.

- (b) to limit or otherwise affect the operation of article <sup>2</sup>[183 of the First Schedule to the Indian Limitation Act, 1908].

#### TRANSFEREES AND LEGAL REPRESENTATIVES.

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee.

50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Legal representative.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may,

<sup>1</sup> For certain purposes in parts of U. P., read "six"—*vide* the U. P. Regulation of Agricultural Credit Act, 1940 (U. P. 14 of 1940), s. 9.

<sup>2</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1940 (34 of 1940), s. 3, for "180 of the Second Schedule to the Indian Limitation Act, 1877".



(Part II.—Execution. Transferees and legal representatives.  
Procedure in execution.)

of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Powers of  
Court to  
enforce  
execution.

PROCEDURE IN EXECUTION.

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

<sup>1</sup>[Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
  - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
  - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

*Explanation.*—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.]

Enforcement  
of decree  
against legal  
representa-  
tive.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1936 (21 of 1936), s. 2.

(Part II.—Execution. Procedure in execution. Arrest and detention.)

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative. Liability of ancestral property.

54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to <sup>1</sup>[the Crown], or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates. Partition of estate or separation of share.

#### ARREST AND DETENTION.

55. (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the <sup>2</sup>[Provincial Government] may appoint for the detention of persons ordered by the Courts of such district to be detained : Arrest and detention.

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to with-

<sup>1</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

*(Part II.—Execution. Arrest and detention.)*

draw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The <sup>1</sup>[Provincial Government] may, by notification in the <sup>2</sup>[Official Gazette], declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the <sup>1</sup>[Provincial Government] in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he <sup>3</sup>[may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court <sup>4</sup>[may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Prohibition  
of arrest or  
detention of  
women in  
execution of  
decree for  
money.

Subsistence-  
allowance.

Detention  
and release.

56. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

57. The <sup>1</sup>[Provincial Government] may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

58. (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>3</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1921 (3 of 1921), s. 2, for "will be discharged".

<sup>4</sup> Subs. by s. 2, *ibid.*, for "shall release".

*(Part II.—Execution. Arrest and detention. Attachment.)*

(b) in any other case for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the decree against him being otherwise fully satisfied, or
- (iii) on the request of the person on whose application he has been so detained, or
- (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence-allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his <sup>Release on</sup> ~~ground of~~ <sup>illness</sup> serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the <sup>1</sup>[Provincial Government], on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

## ATTACHMENT.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or

Property  
liable to  
attachment  
and sale in  
execution of  
decree.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> For amendments to s. 60, in its application to East Punjab, see the Punjab Relief of Indebtedness Act, 1934 (Pun. 7 of 1934), s. 35, as amended by Pun. Acts 12 of 1940 and 6 of 1942.

## (Part II.—Execution. Attachment.)

over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;
- (d) books of account;
- (e) a mere right to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to <sup>1</sup>[pensioners of the Crown], or payable out of any service family pension fund <sup>2</sup>notified in the <sup>3</sup>[Official Gazette] by <sup>4</sup>[the Central Government or the Provincial Government] in this behalf, and political pensions;
- <sup>5</sup>[(h) the wages of labourers and domestic servants, whether payable in money or kind; \* \* \*]
- <sup>7</sup>[(i) salary to the extent of the first hundred rupees and one-half the remainder:

<sup>1</sup> Subs. by the A. O. 1937 for 'pensioners of the Govt.'

<sup>2</sup> For such a notification, see Gazette of India, 1909, Pt. I, p. 5.

<sup>3</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>4</sup> Subs. by the A. O. 1937 for "the G. G. in C.".

<sup>5</sup> Subs. by the Code of Civil Procedure (Second Amendment) Act, 1937 (9 of 1937), s. 2, for the former clauses (h) and (i). The amendments made by that section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937: see *ibid.* s. 3.

<sup>6</sup> The words "and salary, to the extent of the first hundred rupees and one-half the remainder of such salary" rep. by the Code of Civil Procedure (Amendment) Act, 1943 (5 of 1943), s. 2.

<sup>7</sup> Subs. by s. 2, *ibid.*, for the former clause and proviso.

## (Part II.—Execution. Attachment.)

Provided that where such salary is the salary of a servant of the Crown or a servant of a railway company or local authority, and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;]

VIII of 1911.

29 & 30  
Vict., c. 109.  
XXXIV of  
1934.

(j) the pay and allowances of persons to whom the <sup>1</sup>[Indian Army Act, 1911, or the Burma Army Act applies], <sup>2</sup>[or of persons other than commissioned officers to whom the Naval Discipline Act as modified by the Indian Navy (Discipline) Act, 1934, applies];

XIX of 1925.

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, <sup>3</sup>[1925], for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

<sup>4</sup>[(l) any allowance forming part of the emoluments of any <sup>5</sup>[servant of the Crown] or of any servant of a railway company or local authority which the <sup>6</sup>[appropriate Government] may by notification in the <sup>7</sup>[Official Gazette] declare to be exempt from attachment, and any subsistence grant or allowance made to <sup>8</sup>[any such servant] while under suspension;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by <sup>9</sup>[any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and,

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

<sup>1</sup> Subs. by the A. O. 1937 for "Indian Articles of War apply".

<sup>2</sup> Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

<sup>3</sup> Subs. by the Code of Civil Procedure (Second Amendment) Act, 1937 (9 of 1937), s. 2, for "1897".

<sup>4</sup> Subs. by s. 2, *ibid.*, for the original clause. See also footnote 5 on preceding page.

<sup>5</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1943 (5 of 1943), s. 2, for "public officer".

<sup>6</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>7</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>8</sup> Subs. by Act 5 of 1943, s. 2, for "any such officer or servant".

<sup>9</sup> Subs. by the A. O. 1937 for "any law passed under the Indian Councils Act, 1861 and 1892".

## (Part II.—Execution. Attachment.)

<sup>1</sup>[*Explanation 1*].—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable, <sup>2</sup>[and in the case of salary other than salary of a <sup>3</sup>[servant of the Crown] or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable].

<sup>2</sup>[*Explanation 2*.—In clauses (h) and (i), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.]

<sup>4</sup>[*Explanation 3*.—In clause (l) "appropriate Government" means—

(i) as respects any <sup>3</sup>[person] in the service of the Central Government, or any servant of a Federal Railway or of a cantonment authority or of the port authority of a major port, the Central Government;

\* \* \* \* \*

(iii) as respects any other <sup>3</sup>[servant of the Crown] or a servant of any other railway or local authority, the Provincial Government.]

(2) Nothing in this section shall be deemed—

<sup>6</sup>\* to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land <sup>6</sup>\*

\* \* \* \* \*

Partial  
exemption  
of agricul-  
tural produce.

61. The <sup>7</sup>[Provincial Government] <sup>8</sup>\* \* \* may, by general or special order published in the <sup>9</sup>[Official Gazette], declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the <sup>7</sup>[Provincial Government] to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family,

<sup>1</sup> The original Explanation was renumbered Explanation 1 by the Code of Civil Procedure (Second Amendment) Act, 1937 (9 of 1937), s. 2.

<sup>2</sup> Ins. by s. 2, *ibid.* See also foot-note 5 on p. 30, *supra*.

<sup>3</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1943 (5 of 1943), s. 2, for "public officer".

<sup>4</sup> Ins. by the A. O. 1937.

<sup>5</sup> Cl. (ii) rep. by the A. O. 1948.

<sup>6</sup> The letter and brackets "(a)", the word "or" and cl. (b) rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

<sup>7</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>8</sup> The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch., Pt. I.

<sup>9</sup> Subs. by the A. O. 1937 for "local official Gazette".

*(Part II.—Execution. Attachment. Sale.)*

shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. (1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise. Seizure of property in dwelling-house.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63. (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached. Property attached in execution of decrees of several Courts.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. Private alienation of property after attachment to be void.

*Explanation.*—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

**SALE.**

65. Where immoveable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute. Purchaser's title.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may Suit against purchaser not maintainable



(Part II.—Execution. Sale. Delegation to Collector of power to execute decrees against immoveable property.)

on ground of purchase being on behalf of plaintiff.

be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Power for Provincial Government to make rules as to sales of land in execution of decrees for payment of money.

<sup>1</sup>[67. (1) ] The <sup>2</sup>[Provincial Government] \* \* \* may, by notification in the <sup>4</sup>[Official Gazette], make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the <sup>2</sup>[Provincial Government], to make it impossible to fix their value.

<sup>5</sup>[(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the <sup>2</sup>[Provincial Government] may, by notification in the <sup>4</sup>[Official Gazette], declare such rules to be in force, or may, \* \* \* by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.]

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY.

Power to prescribe rules for transferring to Collector execution of certain decrees.

68. The <sup>2</sup>[Provincial Government] may \* \* \* declare, by notification in the <sup>4</sup>[Official Gazette], that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

Provisions of Third Schedule to apply.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

<sup>1</sup> The original s. 67 was renumbered as sub-section (1) of that section by the Code of Civil Procedure (Amendment) Act, 1914 (1 of 1914), s. 3.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G."

<sup>3</sup> The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Pt. I.

<sup>4</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>5</sup> Ins. by Act 1 of 1914, s. 3.

(Part II.—Execution. *Delegation to Collector of power to execute decrees against immoveable property.*

70. (1) The <sup>1</sup>[Provincial Government] may make rules consistent with the aforesaid provisions— Rules of procedure.

(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court;

(b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court. Jurisdiction of Civil Courts barred.

71. In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially. Collector deemed to be acting judicially.

72. (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share. Where Court may authorise Collector to stay public sale of land.

(2) In every such case the provisions of section 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

(Part II.—Execution. Distribution of assets. Resistance to execution.)

#### DISTRIBUTION OF ASSETS.

Proceeds of execution-sale to be rateably distributed among decree-holders.

73. (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Provided as follows:—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;
- (c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—
  - first; in defraying the expenses of the sale;
  - secondly, in discharging the amount due under the decree;
  - thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any) ; and
  - fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of <sup>1</sup>[the Crown].

#### RESISTANCE TO EXECUTION.

Resistance to execution.

74. Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or

(Part II.—Execution. Resistance to execution. Part III.—Incidental proceedings. Commissions.)

some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

### PART III.

#### INCIDENTAL PROCEEDINGS.

##### COMMISSIONS.

75. Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

Power of Court to issue commissions.

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

76. (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a Province other than the Province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

Commission to another Court.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within <sup>1</sup>[the request. Provinces].

78. <sup>2</sup>[Subject to such conditions and limitations as may be prescribed,] the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by <sup>3</sup>[or at the instance of]—

Commissions issued by foreign Courts.

- (a) Courts situate beyond the limits of <sup>1</sup>[the Provinces] and established or continued by the authority of His Majesty or of <sup>3</sup>[the Central Government \* \* \*], or

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1932 (10 of 1932), s. 2.

<sup>3</sup> Subs. by the A. O. 1937 for "the G. G. in C.".

<sup>4</sup> The words "or of the Crown Representative" rep. by the A. O. 1948.

(Part III.—Incidental proceedings. Commissions. Part IV.—Suits in particular cases. Suits by or against the Government or public officers in their official capacity.)

<sup>1</sup>[(b) Courts of any Acceding State, or

(c) Courts of any State or country outside India.]

## PART IV.

### SUITS IN PARTICULAR CASES.

SUITS BY OR AGAINST <sup>2</sup>[THE <sup>3</sup>[GOVERNMENT]] OR PUBLIC OFFICERS  
IN THEIR OFFICIAL CAPACITY.

Suits by or  
against  
Government.

<sup>4</sup>[79. In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—

(a) in the case of a suit by or against the Central Government, the Dominion of India, and

(b) in the case of a suit by or against a Provincial Government, the Province.]

Notice.

80. No suit shall be <sup>5</sup>[instituted against the Government] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been <sup>6</sup>[delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, <sup>7</sup>[except where it relates to a railway], a Secretary to that Government;

<sup>8</sup>[ <sup>9</sup>(b) ] in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;]

10 \* \* \* \* \*

(c) in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District, <sup>11</sup>\*

11 \* \* \* \* \*]

<sup>2</sup> Subs. by the A. O. 1948 for the original cl. (b) and cl. (c), as amended by the Code of Civil Procedure (Amendment) Act, 1932 (10 of 1932), s. 2.

<sup>3</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>4</sup> Subs. by the A. O. 1948 for "Crown".

<sup>5</sup> Subs. by the A. O. 1948 for the former section which had been subs. by the A. O. 1937 for the original section.

<sup>6</sup> Subs. by the A. O. 1948 for "instituted against the Crown". The words "the Crown" had been subs. by the A. O. 1937 for "the Secretary of State for India in Council".

<sup>7</sup> Subs. by the A. O. 1937 for "in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the L. G. or the Collector of the district".

<sup>8</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1948 (6 of 1948), s. 2.

<sup>9</sup> Ins. as cl. (aa) by s. 2, *ibid.*

<sup>10</sup> Cl. (aa) relettered (b) by the A. O. 1948.

<sup>11</sup> The former cl. (b) rep. by the A. O. 1948.

<sup>12</sup> The word "and" and cl. (d) rep. by the A. O. 1948.

(Part IV.—*Suits in particular cases. Suits by or against the Government or public officers in their official capacity. Suits by aliens and by or against foreign rulers and rulers of Indian States.*)

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

Exemption from arrest and personal appearance.

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82. (1) Where the decree is against <sup>1</sup>[the <sup>2</sup>[Dominion of India or a Province]] or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the <sup>3</sup>[Provincial Government].

Execution of decree.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

#### SUITS BY ALIENS AND BY OR AGAINST <sup>4</sup>[ FOREIGN RULERS AND RULERS OF INDIAN STATES].

83. (1) Alien enemies residing <sup>5</sup>[in India] with the permission of the <sup>6</sup>[Central Government], and alien friends, may sue in the Courts <sup>7</sup>[in the Provinces], as if they were subjects of His Majesty.

When aliens may sue.

(2) No alien enemy residing <sup>8</sup>[in India] without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country the Government of which is at war with <sup>9</sup>[India], and carrying on business in that country without a licence in that behalf under the hand \* \* \* of a Secretary to the <sup>10</sup>[Central Government] shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in a foreign country.

<sup>1</sup> Subs. by the A. O. 1937 for "the Secretary of State for India in Council".

<sup>2</sup> Subs. by the A. O. 1948 for "Crown".

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>4</sup> Subs. by the A. O. 1937 for "Foreign and Native Rulers".

<sup>5</sup> Subs. by the A. O. 1948 for "in British India".

<sup>6</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>7</sup> Subs. by the A. O. 1948 for "of British India".

<sup>8</sup> Subs. by the A. O. 1948 for "the United Kingdom of Great Britain and Ireland".

<sup>9</sup> The words "of one of His Majesty's Secretaries of State or" rep. by the A. O. 1948.

<sup>10</sup> Subs. by the A. O. 1937 for "G. of I.".

(Part IV.—Suits in particular cases. Suits by aliens and by or against foreign rulers and rulers of Indian States.)

When foreign States may sue.

84. (1) A foreign State may sue in any Court <sup>1</sup>[in the Provinces]: Provided that such State has been recognized by His Majesty or by the <sup>2</sup>[Central Government]:

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the <sup>3</sup>[Central Government].

Persons specially appointed by Central Government to prosecute or defend for Princes or Chiefs.

85. (1) Persons specially appointed by order <sup>3</sup>[of the Central Government] at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without <sup>4</sup>[the Provinces], or at the request of any person competent, in the opinion <sup>5</sup>[of the Central Government], to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

\* \* \* \* \*

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

Suits against Princes, Chiefs, ambassadors and envoys.

86. (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, <sup>6</sup>[\* \* \* with the consent of the Central Government, certified by the signature of a Secretary to that Government], but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued;

<sup>1</sup> Subs. by the A. O. 1948 for "of British India".

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C".

<sup>3</sup> Subs. by the A. O. 1948 for "of the Govt".

<sup>4</sup> Subs. by the A. O. 1948 for "British India".

<sup>5</sup> The Explanation, ins. by the A. O. 1937, rep. by the A. O. 1948.

<sup>6</sup> Subs. by the A. O. 1937 for "with the consent of the G. G. in C, certified by the signature of a Secretary to the G. of I."

<sup>7</sup> The words "in the case of the Ruling Chief of an Indian State with the consent of the Crown Representative, certified by the signature of the Political Secretary, and in any other case" rep. by the A. O. 1948.

(Part IV.—Suits in particular cases. Suits by aliens and by or against foreign rulers and rulers of Indian States. Interpleader.)

but it shall not be given unless it appears to <sup>1</sup>[the consenting authority] that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with <sup>2</sup>[the consent of the Central Government], certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

<sup>3</sup>[(4) The Central Government \* \* \* may by notification in the Gazette of India authorise a Provincial Government and any Secretary to that Government to exercise with respect to any Prince, Chief, Ambassador or envoy named in the notification the functions assigned by the foregoing subsections to the consenting authority and a certifying officer respectively.]

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

87. A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State :

Style of Princes and Chiefs as parties to suits.

Provided that in giving the consent referred to in the foregoing section <sup>4</sup>[the Central Government\*\*\* or the Provincial Government], as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

#### INTERPLEADER.

88. Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges

Where interpleader suit may be instituted.

<sup>1</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>2</sup> Subs. by the A. O. 1948 for "such consent as is mentioned in sub-section (1)", which had been subs. by the A. O. 1937 for "the consent of the G. G. in C.".

<sup>3</sup> Subs. by the A. O. 1937 for the original sub-section (4).

<sup>4</sup> The words "or the Crown Representative, as the case may be," rep. by the A. O. 1948.

<sup>5</sup> Subs. by the A. O. 1937 for "the G. G. in C. or the L. G.".

<sup>6</sup> The words "the Crown Representative" rep. by the A. O. 1948.



(Part IV.—Suits in particular cases. Interpleader. Part V.—Special proceedings, Arbitration. Special case. Suits relating to public matters.)

or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

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## PART V.

### SPECIAL PROCEEDINGS.

#### ARBITRATION.

89. [*Arbitration.*] *Rep. by the Arbitration Act, 1940 (X of 1940), s. 49 and Sch. III.*

#### SPECIAL CASE.

Power to  
state case for  
opinion of  
Court.

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

#### SUITS RELATING TO PUBLIC MATTERS.

Public  
nuisances.

91. (1) In the case of a public nuisance the Advocate General or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Public  
charities

<sup>1</sup>92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious

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<sup>1</sup> Ss 92 and 93 have no application as regards Tirumalai Tirupati Devasthanams: see the Tirumalai-Tirupati Devasthanams Act, 1932 (Mad. 19 of 1933), s. 44 (2).

(Part V.—*Special proceedings. Suits relating to public matters. Part VI.—Supplemental proceedings.*)

or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the <sup>1</sup>[Provincial Government] within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

XX of 1863

(z) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (i) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

293. The powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the <sup>1</sup>[Provincial Government], exercised also by the Collector or by such officer as the <sup>1</sup>[Provincial Government] may appoint in this behalf.

Exercise of powers of Advocate General outside Presidency-towns

## PART VI.

### SUPPLEMENTAL PROCEEDINGS.

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed—

Supplemental proceedings.

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> See footnote 1 on preceding page.

(Part VI.—*Supplemental proceedings.* Part VII.—*Appeals.* *Appeals from original decrees.*)

- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

95. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

## PART VII.

### APPEALS.

#### APPEALS FROM ORIGINAL DECREES.

Appeal from original decree.

96. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

Appeal from final decree where no appeal from preliminary decree.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

(Part VII.—*Appeals. Appeals from original decrees. Appeals from appellate decrees.*)

98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision where appeal heard by two or more Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

<sup>1</sup>[(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court.]

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

#### APPEALS FROM APPELLATE DECREES.

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:—

Second appeal.

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

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<sup>1</sup> Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

(Part VII.—*Appeals. Appeals from appellate decrees. Appeals from orders.*)

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Second  
appeal on  
no other  
grounds.

101. No second appeal shall lie except on the grounds mentioned in section 100.

No second  
appeal in  
certain suits

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

Power of  
High Court  
to determine  
issues of fact.

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal <sup>1</sup>[which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of section 100].

APPEALS FROM ORDERS.

Orders from  
which appeal  
lies.

104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—

2\* \* \* \* \*

<sup>3</sup>[(f) an order under section 35A;]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

<sup>3</sup>[Provided that no appeal shall lie against any order specified in clause (f) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal under this section.

<sup>1</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1926 (6 of 1926), s. 2, for "but not determined by the lower appellate Court".

<sup>2</sup> Cls. (a) to (f) rep. by the Arbitration Act, 1940 (10 of 1940), s. 49 and Sch. III.

<sup>3</sup> Ins. by the Civil Procedure (Amendment) Act, 1922 (9 of 1922), s. 3. See also foot-note to s. 35A, *supra*.

(Part VII.—*Appeals. Appeals from orders General provisions relating to appeals. Appeals to the King in Council.*)

105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. Other orders.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court. What Courts to hear appeals.

#### GENERAL PROVISIONS RELATING TO APPEALS

107. (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power— Powers of Appellate Court.

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals— Procedure in appeals from appellate decrees and orders.

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

#### APPEALS TO THE KING IN COUNCIL.

109. Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of <sup>1</sup>the When appeals lie to

<sup>1</sup> These references are now to be read and construed as references to the Federal Court *see* the Federal Court (Enlargement of Jurisdiction) Act, 1947 (1 of 1948), s. 6,

<sup>2</sup> Subs. by the A. O. 1948 for "British India".

(Part VII.—*Appeals. Appeals to the 'King in Council.*)King in  
Council.

Provinces], and to the provisions hereinafter contained, an appeal shall lie to 'His Majesty in Council—

- (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction;
- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and
- (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to 'His Majesty in Council.

Value of  
subject-  
matter.

110. In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to 'His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

Bar of  
certain  
appeals.

111. Notwithstanding anything contained in section 109, no appeal shall lie to 'His Majesty in Council—

- (a) from the decree or order of one Judge of a High Court <sup>2</sup>[constituted by His Majesty by Letters Patent], or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or
- (b) from any decree from which under section 102 no second appeal lies.

111A. [*Appeal to Federal Court.*] *Rep. by the Federal Court Act, 1941 (XXI of 1941), s. 2.*

<sup>1</sup> See footnote 1 on pre-page.

<sup>2</sup> Subs. by the A. O. 1937 for "established under the Indian High Courts Act, 1861, or the G. of I. Act, 1915". The words and figures "or the G. of I. Act, 1915" had been ins. by the Amending Act, 1916 (13 of 1916), s. 2 and Sch.

(Part VII.—*Appeals. Appeals to the <sup>1</sup>King in Council. Part VIII.—  
Reference, review and revision.*)

112. (1) Nothing contained in this Code shall be deemed—

Savings.

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to <sup>1</sup>His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to <sup>1</sup>His Majesty in Council, or their conduct before the said Judicial Committee.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

## PART VIII.

### REFERENCE, REVIEW AND REVISION.

113. Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit. Reference to High Court.

114. Subject as aforesaid, any person considering himself aggrieved—

Review.

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears— Revision.

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

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<sup>1</sup> See footnote 1 on p. 47, *supra*.



(Part VIII.—*Reference, review and revision.* Part IX.—*Special provisions relating to the Chartered High Courts.*)

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

## PART IX.

### SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS.

Part to  
apply only  
to certain  
High Courts.

Application  
of Code to  
High Courts.

Execution of  
decree  
before  
ascertain-  
ment of  
costs.

116. This Part applies only to High Courts which are, or may hereafter be, <sup>1</sup>[constituted by His Majesty by Letters Patent].

117. Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts.

118. Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Unauthorised persons not to address Court.

119. Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witness, except where the Court shall have in the exercise of the power conferred by its charter authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Provisions not applicable to High Court in original civil jurisdiction.

120. (r) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

2\*                      \*                      \*                      \*                      \*                      \*

<sup>1</sup> Subs. by the A. O. 1937 for "established under the Indian High Courts Act, 1861, or the G. of I. Act, 1915". The words "or the G. of I. Act, 1915" had been ins. by the Amending Act, 1916 (13 of 1916), s. 2 and Sch.

<sup>2</sup> Sub-section (2) rep. by the Presidency-towns Insolvency Act, 1909 (3 of 1909), s. 127 and Sch. III.

## (Part X.—Rules.)

## PART X.

## RULES.

121. The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Effect of  
rules in  
First  
Schedule.

26 Geo.  
5, c. 2.

122. <sup>1</sup>[Courts which are High Courts for the purposes of the Government of India Act, 1935.] \* \* \* may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

Power of  
certain High  
Courts to  
make rules

123. (1) A Committee, to be called the Rule Committee, shall be constituted at <sup>2</sup>[the town which is the usual place of sitting of each of the High Courts \* \* \* referred to in section 122].

Constitution  
of Rule  
Committees  
in certain  
Provinces.

(2) Each such Committee shall consist of the following persons, namely:—

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District judge or \* \* \* a Divisional Judge for three years.
- (b) a barrister practising in that Court,
- (c) an advocate (not being a barrister) or vakil or pleader enrolled in that Court,
- (d) a Judge of a Civil Court subordinate to the High Court, and
- (e) in the towns of Calcutta, Madras and Bombay, an attorney.

(3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president:

<sup>1</sup> Subs. by the A. O. 1948 for "High Courts constituted by His Majesty by Letters Patent and the Chief Court of Oudh". The words "constituted by His Majesty by Letters Patent" had been subs. by the A. O. 1937 for "established under the Indian High Courts Act, 1861, or the G. of I. Act, 1915". The last six words had been ins. by the Oudh Courts (Supplementary) Act, 1925 (32 of 1925), s. 2 and Sch. The words "or the G. of I. Act, 1915" had been ins. by the Amending Act, 1916 (13 of 1916), s. 2 and Sch.

<sup>2</sup> The words "and the Chief Court of Lower Burma" rep. by the Repealing and Amending Act, 1923 (11 of 1923), s. 3 and Sch. II. The words "Chief Court of Lower Burma" had been subs. for "Chief Courts of the Punjab and Lower Burma" by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. I.

<sup>3</sup> Subs. by Act 13 of 1916, s. 2 and Sch., for "each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon".

<sup>4</sup> The words "and of the Chief Court", ins. by Act 32 of 1925, s. 2 and Sch., rep. by the A. O. 1948.

<sup>5</sup> The words "and of the Chief Court" rep. by Act 11 of 1923, s. 3 and Sch. II. The words "of the Chief Court" had been subs. for "Chief Courts" by Act 18 of 1919, s. 2 and Sch. I.

<sup>6</sup> The words "(in Burma)" which had been subs. for "(in the Punjab or Burma)" by Act 18 of 1919, s. 2 and Sch. I, were rep. by Act 11 of 1923, s. 3 and Sch. II.

## (Part X.—Rules.)

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf <sup>1</sup>[by the Provincial Government].

Committee  
to report to  
High Court.

124. Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

Power of  
other High  
Courts to  
make rules.

125. High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions <sup>2</sup>[as <sup>3</sup>[the Provincial Government] may determine]:

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

Rules to be  
subject to  
approval.

<sup>4</sup>[126. Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the Province in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any Province, to the previous approval of the Governor-General.]

Publication  
of rules.

127. Rules so made and <sup>5</sup>[approved] shall be published in the <sup>6</sup>[Official Gazette], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the

<sup>1</sup> Subs. by the A. O. 1937 for "by the G. G. in C. or by the L. G., as the case may be".

<sup>2</sup> Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for "as the G. G. in C. may determine".

<sup>3</sup> Subs. by the A. O. 1937 for "in the case of the Court of the Judicial Commissioner of Coorg, the G. G. in C., and, in other cases the L. G.".

<sup>4</sup> Subs. by the A. O. 1937 for the former section.

<sup>5</sup> Subs. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I, for "sanctioned".

<sup>6</sup> Subs. by the A. O. 1937 for "Gazette of India or in the local official Gazette, as the case may be". Strictly the substitution would read "Official Gazette or in the Official Gazette, as the case may be", but the latter words have been omitted as being redundant.

## (Part X.—Rules.)

local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

128. (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts Matters for which rules may provide.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;
- (f) summary procedure—
  - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
    - on a contract express or implied; or
    - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
    - on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or
    - on a trust; or
  - (ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;
- (g) procedure by way of originating summons;

## (Part X.—Rules. Part XI.—Miscellaneous.)

- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

Power of Chartered High Courts to make rules as to their original civil procedure.

129. Notwithstanding anything in this Code, any High Court <sup>1</sup>[constituted by His Majesty by Letters Patent] may make such rules not inconsistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Powers of other High Courts to make rules as to matters other than procedure.

<sup>2</sup>[130. A High Court not constituted by His Majesty by Letters Patent may, with the previous approval of the Provincial Government, make with respect to any matter other than procedure any rule which a High Court so constituted might under section 224 of the Government of India Act, 1935, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.] <sup>26 Geo. 5, c. 2.</sup>

Publication of rules.

131. Rules made in accordance with section 129 or section 130 shall be published in the <sup>3</sup>[Official Gazette] and shall from the date of publication or from such other date as may be specified have the force of law.

## PART XI.

## MISCELLANEOUS.

Exemption of certain women from personal appearance.

132. (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

Exemption of other persons.

133. (1) The <sup>4</sup>[Provincial Government] may, by notification in the <sup>5</sup>[Official Gazette], exempt from personal appearance in Court any

<sup>1</sup> Subs. by the A. O. 1937 for "established under the Indian High Courts Act, 1861, or the G. of I. Act, 1915". The words and figures "or the G. of I. Act, 1915" had been ins. by the Amending Act, 1916 (13 of 1916), s. 2 and Sch.

<sup>2</sup> Subs. by the A. O. 1937 for the former section.

<sup>3</sup> Subs. by the A. O. 1937 for "Gazette of India or in the local official Gazette, as the case may be". Strictly the substitution would read "Official Gazette or in the Official Gazette, as the case may be", but the latter words have been omitted as being redundant.

<sup>4</sup> Subs. by the A. O. 1937 for "L. G."

<sup>5</sup> Subs. by the A. O. 1937 for "local official Gazette".

## (Part XI.—Miscellaneous.)

person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the <sup>1</sup>[Provincial Government] and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Arrest other than in execution of decree.

135. (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Exemption from arrest under civil process.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witness acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

<sup>2</sup>[135A. (1) No person shall be liable to arrest or detention in prison under civil process—

Exemption of members of legislative bodies from arrest and detention under civil process.

<sup>3</sup>[(a) if he is a member of a unicameral Legislature or of either Chamber of a bicameral Legislature constituted under the Government of India Act, 1935, during the continuance of any meeting of such Legislature or Chamber;]

(b) if he is a member of any committee of such <sup>4</sup>[Legislature or Chamber], during the continuance of any meeting of such committee;

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> S. 135A ins. by the Legislative Members Exemption Act, 1925 (23 of 1925), s. 3.

<sup>3</sup> Subs. by the A. O. 1937 for the former clause.

<sup>4</sup> Subs. by the A. O. 1937 for "Chamber or Council".

## (Part XI.—Miscellaneous.)

<sup>1</sup>[(c) if he is a member of either Chamber of such a bicameral Legislature, during the continuance of a joint sitting, meeting, conference or joint committee of the Chambers of that Legislature;]

and during the fourteen days before and after such meeting or sitting.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).]

Procedure where person to be arrested or property to be attached is outside district.

136. (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, <sup>2</sup>\* \* \* the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras <sup>3</sup>[or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

Language of subordinate Courts.

137. (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue

<sup>1</sup> Subs. by the A. O. 1937 for original clause.

<sup>2</sup> The words "or of the Chief Court of Lower Burma," rep. by the A. O. 1937.

<sup>3</sup> Subs. by the A. O. 1937 for "Bombay or Rangoon".

## (Part XI.—Miscellaneous.)

to be the language of such subordinate Court until the <sup>1</sup>[Provincial Government] otherwise directs.

(2) The <sup>1</sup>[Provincial Government] may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

<sup>2</sup>138. (1) The <sup>3</sup>[High Court] may, by notification in the <sup>4</sup>[Official Gazette], direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

Power of High Court to require evidence to be recorded in English.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

139. In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any Court which the <sup>1</sup>[Provincial Government] has generally or specially empowered in this behalf.

Oath on affidavit by whom to be administered.

may administer the oath to the deponent.

140. (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

Assessors in causes of salvage, etc.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G."

<sup>2</sup> For s. 138, as applicable to Assam, see the Civil Procedure (Assam Amendment) Act, 1941 (Assam 2 of 1941), s. 2.

<sup>3</sup> Subs. by the Decentralisation Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "L. G."

<sup>4</sup> Subs. by the A. O. 1937 for "local official Gazette".



## (Part XI.—Miscellaneous.)

Miscellaneous proceedings.

141. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Orders and notices to be in writing.

142. All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

Postage.

143. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made :

Provided that the <sup>1</sup>[Provincial Government] <sup>2</sup>\* \* \* may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

Application for restitution.

144. (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed ; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Enforcement of liability of surety.

145. Where any person has become liable as surety—

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the

Court in any suit or in any proceedings consequent thereon, the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47 :

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

Proceedings by or against representatives.

146. Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G."

<sup>2</sup> The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Pt. I.

## (Part XI.—Miscellaneous.)

147. In all suits to which any person under disability is a party, Consent or any consent or agreement, as to any proceeding shall, if given or made agreement by persons with the express leave of the Court by the next friend or guardian for under disability. the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

148. Where any period is fixed or granted by the Court for the Enlarge- doing of any act prescribed or allowed by this Code, the Court may, in ment of time. its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

149. Where the whole or any part of any fee prescribed for any Power to document by the law for the time being in force relating to court-fees has make up not been paid, the Court may, in its discretion, at any stage, allow the deficiency of court- person, by whom such fee is payable, to pay the whole or part, as the case fees. may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Save as otherwise provided, where the business of any Court Transfer of is transferred to any other Court, the Court to which the business is so business. transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

151. Nothing in this Code shall be deemed to limit or otherwise Savings of affect the inherent power of the Court to make such orders as may be inherent powers of necessary for the ends of justice or to prevent abuse of the process of the Court. Court.

152. Clerical or arithmetical mistakes in judgments, decrees or orders Amendment of judgments, or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the applica- decrees or tion of any of the parties. orders.

153. The Court may at any time, and on such terms as to costs or General otherwise as it may think fit amend any defect or error in any proceed- power to ing in a suit; and all necessary amendments shall be made for the pur- amend. pose of determining the real question or issue raised by or depending on such proceeding.

154. Nothing in this Code shall affect any present right of appeal Saving of present right of appeal. which shall have accrued to any party at its commencement.

155. The enactments mentioned in the Fourth Schedule are hereby Amendment of certain Acts. amended to the extent specified in the fourth column thereof.

156. [*Repeals.*] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

157. Notifications published, declarations and rules made, places Continuance of orders, appointed, agreements filed, scales prescribed, forms framed, appoint- under ments made and powers conferred under Act VIII of 1859 or under any

## (Part XI.—Miscellaneous.)

repealed  
enactments.

Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Reference to  
Code of  
Civil  
Procedure  
and other  
repealed  
enactments

158. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

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## THE FIRST SCHEDULE.

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### ORDER I.

*Parties to Suits.***RULES.**

1. Who may be joined as plaintiffs.
2. Power of Court to order separate trials.
3. Who may be joined as defendants.
4. Court may give judgment for or against one or more of joint parties.
5. Defendant need not be interested in all the relief claimed.
6. Joinder of parties liable on same contract.
7. When plaintiff in doubt from whom redress is to be sought.
8. One person may sue or defend on behalf of all in same interest.
9. Misjoinder and nonjoinder.
10. Suit in name of wrong plaintiff.  
Court may strike out or add parties.  
Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others.
13. Objections as to nonjoinder or misjoinder.

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### ORDER II.

*Frame of Suit.*

1. Frame of suit.
2. Suit to include the whole claim.  
Relinquishment of part of claim.  
Omission to sue for one of several reliefs.

## RULES.

3. Joinder of causes of action.
  4. Only certain claims to be joined for recovery of immoveable property.
  5. Claims by or against executor, administrator or heir.
  6. Power of Court to order separate trials.
  7. Objections as to misjoinder.
- 

## ORDER III.

*Recognized Agents and Pleaders.*

1. Appearances, etc., may be in person, by recognized agent or by pleader.
  2. Recognized agents.
  3. Service of process on recognized agent.
  4. Appointment of pleader.
  5. Service of process on pleader.
  6. Agent to accept service.  
Appointment to be in writing and to be filed in Court.
- 

## ORDER IV.

*Institution of Suits.*

1. Suit to be commenced by plaintiff.
  2. Register of suits.
- 

## ORDER V.

*Issue and Service of Summons.**Issue of Summons.*

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

*Service of Summons.*

## RULES.

9. Delivery or transmission of summons for service.
  10. Mode of service.
  11. Service on several defendants.
  12. Service to be on defendant in person when practicable, or on his agent.
  13. Service on agent by whom defendant carries on business.
  14. Service on agent in charge in suits for immoveable property.
  15. Where service may be on male member of defendant's family.
  16. Person served to sign acknowledgment.
  17. Procedure when defendants refuses to accept service or cannot be found.
  18. Endorsement of time and manner of service.
  19. Examination of serving officer.
  20. Substituted service.  
Effect of substituted service.  
Where service substituted, time for appearance to be fixed.
  21. Service of summons where defendant resides within jurisdiction of another Court.
  22. Service within Presidency-towns of summons issued by Courts outside.
  23. Duty of Court to which summons is sent.
  24. Service on defendant in prison.
  25. Service where defendant resides out of the Provinces and has no agent.
  26. Service in foreign territory through Political Agent or Court.
  27. Service on civil public officer or on servant of railway company or local authority.
  28. Service on soldiers, sailors or airmen.
  29. Duty of person to whom summons is delivered or sent for service.
  30. Substitution of letter for summons.
- 

## ORDER VI.

*Pleadings generally.*

1. Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.

## RULES.

6. Condition precedent.
  7. Departure.
  8. Denial of contract.
  9. Effect of document to be stated.
  10. Malice, knowledge, etc.
  11. Notice.
  12. Implied contract, or relation.
  13. Presumptions of law.
  14. Pleading to be signed.
  15. Verification of pleadings.
  16. Striking out pleadings.
  17. Amendment of pleadings.
  18. Failure to amend after order.
- 

## ORDER VII.

*Plaint.*

1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immovable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint.  
Concise statements.
10. Return of plaint.  
Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of  
fresh plaint.

*Documents relied on in plaint.*

14. Production of document on which plaintiff sues.  
List of other documents.
15. Statement in case of documents not in plaintiff's possession or  
power.
16. Suits on lost negotiable instruments

## RULES.

17. Production of shop-book.  
Original entry to be marked and returned.
  18. Inadmissibility of document not produced when plaint filed.
- 

## ORDER VIII.

*Written Statement and Set-off.*

1. Written statement.
  2. New facts must be specially pleaded.
  3. Denial to be specific.
  4. Evasive denial.
  5. Specific denial.
  6. Particulars of set-off to be given in written statement.  
Effect of set-off.
  7. Defence or set-off founded on separate grounds.
  8. New ground of defence.
  9. Subsequent pleadings.
  10. Procedure when party fails to present written statement called for by Court.
- 

## ORDER IX.

*Appearance of parties and Consequence of Non-appearance.*

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons.
6. Procedure when only plaintiff appears.  
When summons duly served.  
When summons not duly served.  
When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.

## RULES.

11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. Setting aside decree *ex parte* against defendant.
14. No decree to be set aside without notice to opposite party.

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ORDER X.*Examination of Parties by the Court.*

1. Ascertainment whether allegations in pleadings are admitted or denied.
2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
4. Consequence of refusal or inability of pleader to answer

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ORDER XI.*Discovery and Inspection.*

1. Discovery by interrogatories
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.
12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleading or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.
20. Premature discovery.



## RULES.

21. Non-compliance with order for discovery.
  22. Using answers to interrogatories at trial.
  23. Order to apply to minors.
- 

## ORDER XII.

*Admissions.*

1. Notice of admission of case.
  2. Notice to admit documents.
  3. Form of notice.
  4. Notice to admit facts.
  5. Form of admissions.
  6. Judgment on admissions.
  7. Affidavit of signature.
  8. Notice to produce documents.
  9. Costs.
- 

## ORDER XIII.

*Production, Impounding and Return of Documents.*

1. Documentary evidence to be produced at first hearing.
  2. Effect of non-production of documents.
  3. Rejection of irrelevant or inadmissible documents.
  4. Endorsements on documents admitted in evidence.
  5. Endorsements on copies of admitted entries in books, accounts and records.
  6. Endorsements on documents rejected as inadmissible in evidence.
  7. Recording of admitted and return of rejected documents.
  8. Court may order any document to be impounded.
  9. Return of admitted documents.
  10. Court may send for papers from its own records or from other Courts.
  11. Provisions as to documents applied to material objects.
- 

## ORDER XIV.

*Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*

1. Framing of issues
2. Issues of law and of fact.
3. Materials from which issues may be framed.

## RULES.

4. Court may examine witnesses or documents before framing issues.
  5. Power to amend, and strike out, issues.
  6. Questions of fact or law may by agreement be stated in form of issues.
  7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.
- 

## ORDER XV.

*Disposal of the Suit at the first hearing.*

1. Parties not at issue.
  2. One of several defendants not at issue.
  3. Parties at issue.
  4. Failure to produce evidence.
- 

## ORDER XVI.

*Summoning and Attendance of Witnesses.*

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.  
Experts.  
Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.  
Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons.
11. If witness appears, attachment may be withdrawn.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.

## RULES.

15. Duty of persons summoned to give evidence or produce document.
16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
19. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
21. Rules as to witnesses to apply to parties summoned.

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ORDER XVII.*Adjournments.*

1. Court may grant time and adjourn hearing.  
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

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ORDER XVIII.*Hearing of the Suit and Examination of Witnesses.*

1. Right to begin.
2. Statement and production of evidence.
3. Evidence where several issues.
4. Witnesses to be examined in open Court.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted.
7. Evidence under section 138.
8. Memorandum when evidence not taken down by Judge.
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down
11. Questions objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. Judge unable to make such memorandum to record reasons of his inability.
15. Power to deal with evidence taken before another Judge.

## RULES.

16. Power to examine witness immediately.
  17. Court may recall and examine witness.
  18. Power of Court to inspect.
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## ORDER XIX.

*Affidavits.*

1. Power to order any point to be proved by affidavit.
  2. Power to order attendance of deponent for cross-examination.
  3. Matters to which affidavits shall be confined
- 

## ORDER XX.

*Judgment and Decree.*

1. Judgment when pronounced.
2. Power to pronounce judgment written by Judge's predecessor.
3. Judgment to be signed.
4. Judgments of Small Cause Courts.  
Judgments of other Courts.
5. Court to state its decision on each issue.
6. Contents of decree.
7. Date of decree.
8. Procedure where Judge has vacated office before signing decree
9. Decree for recovery of immoveable property.
10. Decree for delivery of moveable property.
11. Decree may direct payment by instalments.  
Order, after decree, for payment by instalments.
12. Decree for possession and mesne profits.
13. Decree in administration-suit.
14. Decree in pre-emption-suit.
15. Decree in suit for dissolution of partnership.
16. Decree in suit for account between principal and agent.
17. Special directions as to accounts.
18. Decree in suit for partition of property or separate possession  
of a share therein.
19. Decree when set-off is allowed.  
Appeal from decree relating to set-off.
20. Certified copies of judgment and decree to be furnished.

## ORDER XXI.

*Execution of Decrees and Orders.**Payment under Decree.*

## RULES.

1. Modes of paying money under decree.
2. Payment out of Court to decree-holder.

*Courts executing Decrees.*

3. Lands situate in more than one jurisdiction.
4. Transfer to Court of Small Causes.
5. Mode of transfer.
6. Procedure where Court desires that its own decree shall be executed by another Court.
7. Court receiving copies of decree, etc., to file same without proof.
8. Execution of decree or order by Court to which it is sent.
9. Execution by High Court of decree transferred by other Court.

*Application for execution.*

10. Application for execution.
11. Oral application.  
Written application.
12. Application for attachment of moveable property not in judgment-debtor's possession.
13. Application for attachment of immoveable property to contain certain particulars.
14. Power to require certified extract from Collector's register in certain cases.
15. Application for execution by joint decree-holder.
16. Application for execution by transferee of decree.
17. Procedure on receiving application for execution of decree.
18. Execution in case of cross-decrees.
19. Execution in case of cross-claims under same decree.
20. Cross-decrees and cross-claims in mortgage-suits.
21. Simultaneous execution.
22. Notice to show cause against execution in certain cases.
23. Procedure after issue of notice.

*Process for execution.*

24. Process for execution.
25. Endorsement on process.

*Stay of execution.*

26. When Court may stay execution.  
Power to require security from, or impose conditions upon, judgment-debtor.

## RULÈS.

27. Liability of judgment-debtor discharged.
28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.
29. Stay of execution pending suit between decree-holder and judgment-debtor.

*Mode of execution.*

30. Decree for payment of money.
31. Decree for specific moveable property.
32. Decree for specific performance for restitution of conjugal rights or for an injunction.
33. Discretion of Court in executing decrees for restitution of conjugal rights.
34. Decree for execution of document, or endorsement of negotiable instrument.
35. Decree for immoveable property.
36. Decree for delivery of immoveable property when in occupancy of tenant.

*Arrest and detention in the civil prison.*

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.
38. Warrant for arrest to direct judgment-debtor to be brought up.
39. Subsistence-allowance.
40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

*Attachment of property.*

41. Examination of judgment-debtor as to his property.
42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.
43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.
44. Attachment of agricultural produce.
45. Provisions as to agricultural produce under attachment.
46. Attachment of debt, share and other property not in possession of judgment-debtor.
47. Attachment of share in moveables.
48. Attachment of salary or allowances of public officer or servant of railway company or local authority.
49. Attachment of partnership property.
50. Execution of decree against firm.

## RULES.

51. Attachment of negotiable instruments.
52. Attachment of property in custody of Court or public officer.
53. Attachment of decrees.
54. Attachment of immovable property.
55. Removal of attachment after satisfaction of decree.
56. Order for payment of coin or currency notes to party entitled under decree.
57. Determination of attachment.

*Investigation of claims and objections.*

58. Investigation of claims to, and objections to attachment of, attached property.  
Postponement of sale.
59. Evidence to be adduced by claimant.
60. Release of property from attachment.
61. Disallowance of claim to property attached.
62. Continuance of attachment subject to claim of incumbrancer.
63. Saving of suits to establish right to attached property.

*Sale generally.*

64. Power to order property attached to be sold and proceeds to be paid to person entitled.
65. Sales by whom conducted and how made.
66. Proclamation of sales by public auction.
67. Mode of making proclamation.
68. Time of sale.
69. Adjournment or stoppage of sale.
70. Saving of certain sales. ...
71. Defaulting purchaser answerable for loss on re-sale.
72. Decree-holder not to bid for or buy property without permission.  
Where decree-holder purchases, amount of decree may be taken as payment.
73. Restriction on bidding or purchase by officers.

*Sale of moveable property.*

74. Sale of agricultural produce.
75. Special provisions relating to growing crops.
76. Negotiable instruments and shares in corporations.
77. Sale by public auction.
78. Irregularity not to vitiate sale, but any person injured may sue.
79. Delivery of moveable property, debts and shares.

## RULÈS.

- 80. Transfer of negotiable instruments and shares
- 81. Vesting order in case of other property.

*Sale of immoveable property.*

- 82. What Courts may order sales.
- 83. Postponement of sale to enable judgment-debtor to raise amount of decree.
- 84. Deposit by purchaser and re-sale on default.
- 85. Time for payment in full of purchase-money.
- 86. Procedure in default of payment.
- 87. Notification on re-sale.
- 88. Bid of co-sharer to have preference.
- 89. Application to set aside sale on deposit.
- 90. Application to set aside sale on ground of irregularity or fraud.
- 91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.
- 92. Sale when to become absolute or be set aside.
- 93. Return of purchase-money in certain cases.
- 94. Certificate to purchaser.
- 95. Delivery of property in occupancy of judgment-debtor.
- 96. Delivery of property in occupancy of tenant.

*Resistance to delivery of possession to decree-holder or purchaser.*

- 97. Resistance or obstruction to possession of immoveable property.
- 98. Resistance or obstruction by judgment-debtor.
- 99. Resistance or obstruction by *bona fide* claimant.
- 100. Dispossession by decree-holder or purchaser.
- 101. *Bona fide* claimant to be restored to possession.
- 102. Rules not applicable to transferee *litis pendente*.
- 103. Orders conclusive subject to regular suit.

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 ORDER XXII.
*Death, Marriage and Insolvency of Parties.*

- 1. No abatement by party's death, if right to sue survives.
- 2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.
- 3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.
- 4. Procedure in case of death of one of several defendants or of sole defendant.



## RULES.

5. Determination of question as to legal representative.
  6. No abatement by reason of death after hearing.
  7. Suit not abated by marriage of female party.
  8. When plaintiff's insolvency bars suit.  
Procedure where assignee fails to continue suit or give security.
  9. Effect of abatement or dismissal.
  10. Procedure in case of assignment before final order in suit
  11. Application of Order to appeals.
  12. Application of Order to proceedings.
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## ORDER XXIII.

*Withdrawal and Adjustment of Suits.*

1. Withdrawal of suit or abandonment of part of claim.
  2. Limitation law not affected by first suit.
  3. Compromise of suit.
  4. Proceedings in execution of decrees not affected.
- 

## ORDER XXIV.

*Payment into Court.*

1. Deposit by defendant of amount in satisfaction of claim.
  2. Notice of deposit.
  3. Interest on deposit not allowed to plaintiff after notice.
  4. Procedure where plaintiff accepts deposit as satisfaction in part.
  5. Procedure where he accepts it as satisfaction in full.
- 

## ORDER XXV.

*Security for Costs.*

1. When security for costs may be required from plaintiff.  
Residence out of the Provinces.
  2. Effect of failure to furnish security.
- 

## ORDER XXVI.

*Commissions.**Commissions to examine witnesses.*

1. Cases in which Court may issue commission to examine witness.
2. Order for commission.
3. Where witness resides within Court's jurisdiction.

## RULES.

4. Persons for whose examination commission may issue.
5. Commission or Request to examine witness not within the Provinces.
6. Court to examine witness pursuant to commission.
7. Return of commission with depositions of witnesses.
8. When depositions may be read in evidence.

*Commissions for local investigations.*

9. Commissions to make local investigations.
10. Procedure of Commissioner.  
Report and depositions to be evidence in suit.  
Commissioner may be examined in person.

*Commissions to examine accounts.*

11. Commission to examine or adjust accounts.
12. Court to give Commissioner necessary instructions.  
Proceedings and report to be evidence.  
Court may direct further inquiry.

*Commissions to make partitions.*

13. Commission to make partition of immoveable property.
14. Procedure of Commissioner.

*General provisions.*

15. Expenses of commission to be paid into Court.
16. Powers of Commissioners.
17. Attendance and examination of witnesses before Commissioner.
18. Parties to appear before Commissioner.

*Commissions issued at the instance of Foreign Tribunals.*

19. Cases in which High Court may issue commission to examine witness.
20. Application for issue of commission.
21. To whom commission may be issued.
22. Issue, execution and return of commissions, and transmission of evidence to foreign Court.

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ORDER XXVII.*Suits by or against the Government or Public Officers in their official capacity.*

1. Suits by or against Government.
2. Persons authorized to act for Government.
3. Plaints in suits by or against Government.
4. Agent for Government to receive process.
5. Fixing of day for appearance on behalf of Government.
6. Attendance of person able to answer questions relating to suit against Government.

## RULES.

7. Extension of time to enable public officer to make reference to Government.
8. Procedure in suits against public officer.
- 8A. No security to be required from Government or a public officer in certain cases.
- 8B. Definitions of "Government" and "Crown pleader".

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ORDER XXVIIA.

*Suits involving a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder.*

1. Notice to the Advocate-General.
2. Court may add Government as party.
3. Costs.
4. Application of Order to appeals

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ORDER XXVIII.

*Suits by or against Military or Naval Men or Airmen.*

1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them.
2. Person so authorized may act personally or appoint pleader.
3. Service on person so authorized, or on his pleader, to be good service.

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ORDER XXIX.

*Suits by or against Corporations.*

1. Subscription and verification of pleading.
2. Service on corporation.
3. Power to require personal attendance of officer of corporation.

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ORDER XXX.

*Suits by or against Firms and Persons carrying on business in names other than their own.*

1. Suing of partners in name of firm.
2. Disclosure of partners' names.
3. Service.
4. Right of suit on death of partner.
5. Notice in what capacity served.
6. Appearance of partners.
7. No appearance except by partners.
8. Appearance under protest.
9. Suits between co-partners.
10. Suit against person carrying on business in name other than his own.

## XXXI.

*Suits by or against Trustees, Executors and Administrators.*

## RULES.

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.
  2. Joinder of trustees, executors and administrators.
  3. Husband of married executrix not to join.
- 

## ORDER XXXII.

*Suits by or against Minors and Persons of Unsound Mind.*

1. Minor to sue by next friend.
  2. Where suit is instituted without next friend, plaint to be taken off the file.
  3. Guardian for the suit to be appointed by Court for minor defendant.
  4. Who may act as next friend or be appointed guardian for the suit.
  5. Representation of minor by next friend or guardian for the suit.
  6. Receipt by next friend or guardian for the suit of property under decree for minor.
  7. Agreement or compromise by next friend or guardian for the suit.
  8. Retirement of next friend.
  9. Removal of next friend.
  10. Stay of proceedings on removal, etc., of next friend.
  11. Retirement, removal or death of guardian for the suit.
  12. Course to be followed by minor plaintiff or applicant on attaining majority.
  13. Where minor co-plaintiff attaining majority desires to repudiate suit.
  14. Unreasonable or improper suit.
  15. Application of rules to persons of unsound mind.
  16. Saving for Princes and Chiefs.
- 

## ORDER XXXIII.

*Suits by Paupers.*

1. Suits may be instituted *in forma pauperis*.
2. Contents of application.
3. Presentation of application.
4. Examination of applicant.  
If presented by agent, Court may order applicant to be examined by commission.
5. Rejection of application.
6. Notice of day for receiving evidence of applicant's pauperism.

## RULÈS.

7. Procedure at hearing.
8. Procedure if application admitted.
9. Dispaupering.
10. Costs where pauper succeeds.
11. Procedure where pauper fails.
- 11A. Procedure where pauper suit abates.
12. Provincial Government may apply for payment of court-fees.
13. Provincial Government to be deemed a party.
14. Recovery of amount of court-fees.
15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.
16. Costs.

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ORDER XXXIV.
*Suits relating to Mortgages of Immoveable Property.*

1. Parties to suits for foreclosure sale and redemption.
2. Preliminary decree in foreclosure-suit.
3. Final decree in foreclosure-suit
4. Preliminary decree in suit for sale.  
Power to decree sale in foreclosure suit.
5. Final decree in suit for sale.
6. Recovery of balance due on mortgage in suit for sale.
7. Preliminary decree in redemption-suit.
8. Final decree in redemption-suit.
- 8A. Recovery of balance due on mortgage in suit for redemption.
9. Decree where nothing is found due or where mortgagee has been overpaid.
10. Costs of mortgagee subsequent to decree.
11. Payment of interest.
12. Sale of property subject to prior mortgage.
13. Application of proceeds.
14. Suit for sale necessary to bring mortgaged property to sale.
15. Mortgages by the deposit of title-deeds and charges.

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ORDER XXXV.
*Interpleader.*

1. Plaintiff in interpleader-suit.
2. Payment of thing claimed into Court.
3. Procedure where defendant is suing plaintiff.

## RULÈS.

4. Procedure at first hearing
  5. Agents and tenants may not institute interpleader-suits.
  6. Charge for plaintiff's costs.
- 

## ORDER XXXVI.

*Special Case.*

1. Power to state case for Court's opinion.
  2. Where value of subject-matter must be stated.
  3. Agreement to be filed and registered as suit.
  4. Parties to be subject to Court's jurisdiction.
  5. Hearing and disposal of case.
- 

## ORDER XXXVII.

*Summary Procedure on Negotiable Instruments*

1. Application of Order.
  2. Institution of summary suits upon bills of exchange, etc.
  3. Defendant showing defence on merits to have leave to appear.
  4. Power to set aside decree
  5. Power to order bill, etc., to be deposited with officer of Court.
  6. Recovery of cost of noting non-acceptance of dishonoured bill or note.
  7. Procedure in suits.
- 

## ORDER XXXVIII.

*Arrest and Attachment before judgment.**Arrest before judgment.*

1. Where defendant may be called upon to furnish security for appearance.
2. Security.
3. Procedure on application by surety to be discharged.
4. Procedure where defendant fails to furnish security or find fresh security.

*Attachment before judgment.*

5. Where defendant may be called upon to furnish security for production of property.
6. Attachment where cause not shown or security not furnished.
7. Mode of making attachment.
8. Investigation of claim to property attached before judgment.

## RULÈS.

9. Removal of attachment when security furnished or suit dismissed.
10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.
11. Property attached before judgment not to be re-attached in execution of decree.
12. Agricultural produce not attachable before judgment.
13. Small Cause Court not to attach immoveable property.

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ORDER XXXIX.
*Temporary Injunctions and Interlocutory Orders.**Temporary injunctions.*

1. Cases in which temporary injunction may be granted.
2. Injunction to restrain repetition or continuance of breach.
3. Before granting injunction, Court to direct notice to opposite party.
4. Order for injunction may be discharged, varied or set aside.
5. Injunction to corporation binding on its officers.

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6. Power to order interim sale.
7. Detention, preservation, inspection, etc., of subject-matter of suit.
8. Application for such orders to be after notice.
9. When party may be put in immediate possession of land the subject-matter of suit.
10. Deposit of money, etc., in Court.

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ORDER XL
*Appointment of Receivers.*

1. Appointment of receivers.
2. Remuneration.
3. Duties.
4. Enforcement of receiver's duties.\*
5. When Collector may be appointed receiver.

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ORDER XLI.
*Appeals from Original Decrees.*

1. Form of appeal.  
What to accompany memorandum.  
Contents of memorandum.

## RULES.

2. Grounds which may be taken in appeal
3. Rejection or amendment of memorandum.
4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

*Stay of proceedings and of execution.*

5. Stay by Appellate Court.  
Stay by Court which passed the decree.
6. Security in case of order for execution of decree appealed from.
7. [*Repealed.*]
8. Exercise of powers in appeal from order made in execution of decree.

*Procedure on admission of appeal.*

9. Registry of memorandum of appeal  
Register of appeals.
10. Appellate Court may require appellant to furnish security for costs.  
Where appellant resides out of the Provinces.
11. Power to dismiss appeal without sending notice to Lower Court.
12. Day for hearing appeal.
13. Appellate Court to give notice to Court whose decree appealed from.  
Transmission of papers to Appellate Court.  
Copies of exhibits in Court whose decree appealed from.
14. Publication and service of notice of day for hearing appeal.  
Appellate Court may itself cause notice to be served.
15. Contents of notice.

*Procedure on hearing.*

16. Right to begin.
17. Dismissal of appeal for appellant's default.  
Hearing appeal *ex parte*.
18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.
19. Re-admission of appeal dismissed for default.
20. Power to adjourn hearing and direct persons appearing interested to be made respondents.
21. Re-hearing on application of respondent against whom *ex parte* decree made.
22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.  
Form of objection and provisions applicable thereto,



## RULÈS.

23. Remand of case by Appellate Court.
24. Where evidence on record sufficient, Appellate Court may determine case finally.
25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.
26. Findings and evidence to be put on record.  
Objections to finding.  
Determination of appeal.
27. Production of additional evidence in Appellate Court.
28. Mode of taking additional evidence.
29. Points to be defined and recorded.

*Judgment in appeal.*

30. Judgment when and where pronounced.
31. Contents, date and signature of judgment.
32. What judgment may direct.
33. Power of Court of Appeal.
34. Dissent to be recorded.

*Decree in appeal.*

35. Date and contents of decree.  
Judge dissenting from judgment need not sign decree.
36. Copies of judgment and decree to be furnished to parties.
37. Certified copy of decree to be sent to Court whose decree appealed from.

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ORDER XLII.*Appeals from Appellate Decrees.*

1. Procedure.
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## ORDER XLIII.

*Appeals from Orders.*

1. Appeals from orders.
  2. Procedure.
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## ORDER XLIV.

*Pauper Appeals.*

1. Who may appeal as pauper.  
Procedure on application for admission of appeal.
2. Inquiry into pauperism.

## ORDER XLV.

*Appeals to the <sup>1</sup>King in Council.*

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1. "Decree" defined.
  2. Application to Court whose decree complained of.
  3. Certificate as to value or fitness.
  4. Consolidation of suits.
  5. Remission of dispute to Court of first instance.
  6. Effect of refusal of certificate.
  7. Security and deposit required on grant of certificate.
  8. Admission of appeal and procedure thereon.
  9. Revocation of acceptance of security.
  - 9A. Power to dispense with notices in case of deceased parties.
  10. Power to order further security or payment.
  11. Effect of failure to comply with order.
  12. Refund of balance deposit.
  13. Powers of Court pending appeal.
  14. Increase of security found inadequate.
  15. Procedure to enforce orders of <sup>1</sup>King in Council.
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  17. [*Repealed.*]
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## ORDER XLVI.

*Reference.*

1. Reference of question to High Court.
  2. Court may pass decree contingent upon decision of High Court.
  3. Judgment of High Court to be transmitted, and case disposed of accordingly.
  4. Costs of reference to High Court.
  5. Power to alter, etc., decree of Court making reference.
  6. Power to refer to High Court questions as to jurisdiction in small causes.
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1. Application for review of judgment.
2. To whom applications for review may be made.
3. Form of applications for review.

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<sup>1</sup> See footnote 1 on page 47, *supra*.

## RULES.

4. Application where rejected.  
Application where granted.
5. Application for review in Court consisting of two or more Judges.
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1. Provincial Small Cause Courts.

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ORDER LI.*Presidency Small Cause Courts.*

1. Presidency Small Cause Courts.

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## A.—PLEADINGS.

1. Titles of suits.
2. Description of parties in particular cases.
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## B.—PROCESS.

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## E.—EXECUTION.

## F.—SUPPLEMENTAL PROCEEDINGS.

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## H.—MISCELLANEOUS.

(The First Schedule. Order I.—Parties to Suits.)

## THE FIRST SCHEDULE.

### ORDER I.

#### *Parties to Suits.*

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise. Who may be joined as plaintiffs.

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient. Power of Court to order separate trials.

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise. Who may be joined as defendants.

4. Judgment may be given without any amendment—

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to ; Court may give judgment for or against one or more of joint parties

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

5. It shall not be necessary that every defendant shall be interested as to all relief claimed in any suit against him. Defendant need not be interested in all the relief claimed.

6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes. Joinder of parties liable on same contract.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties. When plaintiff in doubt from whom redress is to be sought.

18. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, One person may sue or defend on behalf of all in same interest.

<sup>1</sup> This rule has no application to suits concerning the Tirumalai-Tirupati Devasthanams: see the Tirumalai-Tirupati Devasthanams Act, 1932 (Mad. 19 of 1933), s. 44 (2).

*(The First Schedule. Order I.—Partes to Suits.)*

at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

Misjoinder  
and  
nonjoinder.

9. No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit in name  
of wrong  
plaintiff.

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Court may  
strike out or  
add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Where  
defendant  
added,  
plaint to be  
amended.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, XV of 1877, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Conduct of  
suit.

11. The Court may give the conduct of the suit to such person as it deems proper.

Appearance  
of one of  
several  
plaintiffs or

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are

<sup>1</sup> See now the Indian Limitation Act, 1908 (9 of 1908), s. 22.

(The First Schedule. Order I.—Parties to Suits. Order II.—Frame of Suit.)

more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding. defendants for others.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13. All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived. Objections as to nonjoinder or misjoinder.

## ORDER II.

### *Frame of Suit.*

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Frame of suit.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action ; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. Suit to include the whole claim.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Relinquishment of part of claim.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs ; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. Omission to sue for one of several reliefs.

*Explanation.*—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

### *Illustration.*

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly ; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit, Joinder of causes of action.

(The First Schedule. Order II.—*Frame of suit.* Order III.—*Recognized Agents and Pleadors.*)

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Only certain claims to be joined for recovery of immoveable property.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except—

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof ;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held ; and
- (c) claims in which the relief sought is based on the same cause of action :

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Claims by or against executor, administrator or heir.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Power of Court to order separate trials.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Objections as to misjoinder.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

### ORDER III.

#### *Recognized Agents and Pleadors.*

Appearances, etc., may be in person, by recognized agent or by pleader.

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader <sup>1</sup>[appearing, applying or acting, as the case may be,] on his behalf:

<sup>1</sup> Subs. by the Code of Civil Procedure (Second Amendment) Act, 1926 (22 of 1926), s. 2, for "duly appointed to act".

*(The First Schedule. Order III.—Recognized Agents and Pleadors.)*

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are— Recognized agents.

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs. Service of process on recognized agent.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

<sup>1</sup>[4. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment. Appointment of pleader.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purposes of sub-rule (2) an application for review of judgment, an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

<sup>1</sup> Subs. by the Code of Civil Procedure (Second Amendment) Act, 1926 (22 of 1926), s. 2, for the original rule 4.



(*The First Schedule. Order III.—Recognized Agents and Pleadors. Order IV.—Institution of Suits. Order V.—Issue and Service of Summons.*)

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating—

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.]

Service of  
process on  
pleader.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Agent to  
accept  
service.

6. (1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Appointment  
to be in  
writing and  
to be filed in  
Court

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

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#### ORDER IV.

##### *Institution of Suits.*

Suit to be  
commenced  
by plaintiff.

1. (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Register of  
suits.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

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#### ORDER V.

##### *Issue and Service of Summons.*

##### *Issue of Summons.*

Summons

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

*(The First Schedule. Order V.—Issue and Service of Summons.)*

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

Copy or statement annexed to summons. Court may order defendant or plaintiff to appear in person.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party shall be ordered to appear in person unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

No party to be ordered to appear in person unless resident within certain limits.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Fixing day for appearance of defendant.

*(The First Schedule. Order V.—Issue and Service of Summons.)*

Summons to order defendant to produce documents relied on by him.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

*Service of Summons.*

Delivery or transmission of summons for service.

9. (1) where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

Mode of service.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Service on agent in charge in suits for immoveable property.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be

*(The First Schedule. Order V.—Issue and Service of Summons.)*

made on any adult male member of the family of the defendant who is residing with him.

male member of defendant's family.

*Explanation.*—A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Person served to sign acknowledgment.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose persence the copy was affixed.

Procedure when defendant refuses to accept service, or cannot be found.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Endorsement of time and manner of service

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Examination of serving officer.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Substituted service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of substituted service.

*(The First Schedule. Order V.—Issue and Service of Summons.)*

Where service substituted time for appearance to be fixed.

Service of summons where defendant resides within jurisdiction of another Court.

Service within Presidency-towns of summons issued by Courts outside.

Duty of Court to which summons is sent

Service on defendant in prison.

Service where defendant resides out of the Provinces and has no agent.

Service in foreign territory through Political Agent or Court.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

21. A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras <sup>1</sup>[and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. Where the defendant resides out of <sup>2</sup>[the Provinces] and has no agent in <sup>2</sup>[the Provinces] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

26. Where—

(a) in the exercise of any <sup>3</sup>[foreign or extra-Provincial jurisdiction vested in the Central Government], a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

<sup>4</sup>[(b) <sup>5</sup>[the Provincial Government] has, by notification in the <sup>6</sup>[Official Gazette], declared<sup>7</sup>, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service

<sup>1</sup> Subs. by the A. O. 1937 for "Bombay and Rangoon".

<sup>2</sup> Subs. by the A. O. 1948 for "British India".

<sup>3</sup> Subs. by the A. O. 1948 for "foreign jurisdiction vested in His Majesty or in the Central Government or the Crown Representative". The words "the Central Government or the Crown Representative" had been subs. by the A. O. 1937 for "the G. G. in C.".

<sup>4</sup> Subs. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 2 and Sch. I, for the original sub-rule (b).

<sup>5</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>6</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>7</sup> For such declarations *see* Gen. R. & O., Supplementary Vol. VI, p. 254.

*(The First Schedule. Order V.—Issue and Service of Summons.)*

by such Court of any summons <sup>1</sup>[issued under this Code by a Court of the Province] shall be deemed to be valid service,]

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant ; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Where the defendant is a public officer (not belonging to His Majesty's military, <sup>2</sup>[naval or air] forces <sup>3</sup>\* \* \*), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on civil public officer or on servant of railway company or local authority.

28. Where the defendant is a soldier, <sup>4</sup>[sailor] <sup>5</sup>[or airman], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Service on soldiers, sailors or airmen.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

Duty of person to whom summons is delivered or sent for service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

Substitution of letter for summons.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which

<sup>1</sup> Subs. by the A. O. 1937 for " issued by a Court under this Code ".

<sup>2</sup> Subs. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I, for " or naval ".

<sup>3</sup> The words " or His Majesty's Indian Marine Service " rep. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

<sup>4</sup> Ins. by s. 2 and Sch., *ibid.*

<sup>5</sup> Ins. by Act 10 of 1927, s. 2 and Sch. I.

(*The First Schedule. Order V.—Issue and Service of Summons. Order VI.—Pleadings generally.*)

the Court thinks fit ; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

## ORDER VI.

### *Pleadings generally.*

Pleading.

1. "Pleading" shall mean plaint or written statement.

Pleading to state material facts and not evidence.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

Forms of pleading.

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Particulars to be given where necessary.

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Further and better statement, or particulars.

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Condition precedent.

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be ; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Departure.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of contract.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Effect of document to be stated.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

*(The First Schedule. Order VI.—Pleadings generally.)*

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. Malice,  
knowledge,  
etc.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material. Notice.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. Implied  
contract, or  
relation.

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim). Presumptions  
of law.

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Pleading to  
be signed.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Verification  
of pleadings.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. Striking out  
pleadings.

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be neces- Amendment  
of pleadings.



(The First Schedule. Order VI.—Pleadings generally. Order VII.—  
Plaint.)

sary for the purpose of determining the real questions in controversy between the parties.

Failure to  
amend after  
order.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

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ORDER VII.

*Plaint.*

Particulars  
to be  
contained  
in plaint.

1. The plaint shall contain the following particulars:—

- (a) the name of the Court in which the suit is brought ;
- (b) the name, description and place of residence of the plaintiff ;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained ;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect ;
- (e) the facts constituting the cause of action and when it arose ;
- (f) the facts showing that the Court has jurisdiction ;
- (g) the relief which the plaintiff claims ;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished ; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so as the case admits.

In money  
suits.

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed :

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

Where the  
subject-  
matter of  
the suit is  
immovable  
property.

3. Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.

*(The First Schedule. Order VII.—Plaint.)*

4. Where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it. When plaintiff sues as representative.
5. The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand. Defendant's interest and liability to be shown.
6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed. Grounds of exemption from limitation law.
7. Every plaintiff shall state specially the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement. Relief to be specifically stated.
8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly. Relief founded on separate grounds.
9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements. Procedure of admitting plaint. Concise statements.
- (2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.
- (3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.
- (4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.
- <sup>1</sup>10. (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. Return of plaint.
- (2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Procedure on returning plaint.

<sup>1</sup> This rule has been applied to suits for the recovery of rent under the Chota Nagpur Tenancy Act, 1908 (Ben. 6 of 1908), s. 265.

*(The First Schedule. Order VII.—Plaint.)*

Rejection of  
plaint.

11. The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action:
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:
- (d) where the suit appears from the statement in the plaint to be barred by any law

Procedure on  
rejecting  
plaint

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

Where rejection of plaint does not preclude presentation of fresh plaint.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

*Documents relied on in plaint.*

Production of  
document on  
which plaintiff  
sues.

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other  
documents.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in  
case of documents  
not in plaintiff's  
possession  
or power.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

Suits on lost  
negotiable  
instruments.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of  
shop-book.

17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies. xviii of 1891.

(*The First Schedule. Order VII.—Plaint. Order VIII.—Written Statement and Set-off.*)

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed. Original entry to be marked and returned.

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Inadmissibility of document not produced when plaint filed.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witness, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

### ORDER VIII.

#### *Written Statement and Set-off.*

1. The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. Written statement.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality. New facts must be specially pleaded.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth except damages. Denial to be specific.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. Evasive denial.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. Specific denial.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

*(The First Schedule. Order VIII.—Written Statement and Set-off.)*

Particulars  
of set-off to  
be given in  
written  
statement.

6. (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

Effect of  
set-off.

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

*Illustrations.*

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

Defence or  
set-off found-  
ed on sepa-  
rate grounds.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

(The First Schedule. Order VIII.—Written Statement and Set-off.  
Order IX.—Appearance of Parties and Consequence of Non-appearance.)

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement. New ground of defence.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same. Subsequent pleadings.

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit. Procedure when party fails to present written statement called for by Court.

## ORDER IX.

### *Appearance of Parties and Consequence of Non-appearance.*

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court. Parties to appear on day fixed in summons for defendant to appear and answer.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed: Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed. Where neither party appears, suit to be dismissed.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit. Plaintiff may bring fresh suit or Court may restore suit to file.

(The First Schedule. Order IX.—*Appearance of Parties and Consequence of Non-appearance.*)

Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons.

5. <sup>1</sup>[(1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

(a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.]

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure when only plaintiff appears.

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

When summons duly served.

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte* ;

When summons not duly served.

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant ;

When summons served, but not in due time.

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

<sup>1</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1920 (24 of 1920), s. 2, for the original sub-rule (1).

(The First Schedule. Order IX.—Appearance of Parties and Consequence of Non-appearance.)

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Procedure where defendant only appears.

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Decree against plaintiff by default bars fresh suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several plaintiffs.

11. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Procedure in case of non-attendance of one or more of several defendants.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Setting aside decree *ex parte* against defendant.



(*The First Schedule. Order IX.—Appearance of Parties and Consequence of Non-appearance. Order X.—Examination of Parties by the Court. Order XI.—Discovery and Inspection.*)

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

No decree to be set aside without notice to opposite party.

## ORDER X.

### *Examination of Parties by the Court.*

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in pleadings are admitted or denied.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Oral examination of party, or companion of party.

13. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Substance of examination to be written. Consequence of refusal or inability of pleader to answer.

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

## ORDER XI.

### *Discovery and Inspection.*

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties

Discovery by interrogatories.

<sup>1</sup> This rule is not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. 4 of 1925), s. 16 (2).

## (The First Schedule. Order XI.—Discovery and Inspection.)

or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Particular  
interroga-  
tories to be  
submitted.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Costs of  
interroga-  
tories.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Form of  
interroga-  
tories.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Corporations.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bonâ fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Objections to  
interroga-  
tories by  
answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Setting aside  
and striking  
out interroga-  
tories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

Affidavit in  
answer,  
filing.

*(The First Schedule. Order XI.—Discovery and Inspection.)*

Form of  
affidavit in  
answer.

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

No exception  
to be taken.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

Order to  
answer or  
answer  
further.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *vivâ voce* examination, as the Court may direct.

Application  
for discovery  
of docu-  
ments.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Affidavit of  
documents.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Production of  
documents.

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of  
documents  
referred to in  
pleadings or  
affidavits.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

(The First Schedule. Order XI.—Discovery and Inspection.)

16. Notice to any party to produce any documents referred to in his Notice to pleading or affidavits shall be in Form No. 7 in Appendix C, with such produce. variations as circumstances may require.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice inspection when notice stating a time within three days from the delivery thereof at which the given. documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents, he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit : Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. Order for inspection.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original verified copies. books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations : Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(The First Schedule. Order XI.—Discovery and Inspection. Order XII.—Admissions.)

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power ; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature  
discovery.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Non-compliance with  
order for  
discovery.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Using  
answers to  
Interrogatories at  
trial.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer : Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Order to  
apply to  
minors.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

## XII.

### *Admissions.*

Notice of  
admission  
of case.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

(*The First Schedule. Order XII.—Admissions.*)

2. Either party may call upon the other party to admit any document, saving all just exceptions ; in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs ; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Notice to  
admit  
documents.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Form of  
notice.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs : Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice : Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Notice to  
admit facts.

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Form of  
admissions.

6. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties : and the Court may upon such application make such order, or give such judgment, as the Court may think just.

Judgment on  
admissions.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Affidavit of  
signature.

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Notice to  
produce  
documents.

(*The First Schedule. Order XII.—Admissions. Order XIII.—Production, Impounding and Return of Documents.*)

Costs.

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XIII.

*Production, Impounding and Return of Documents.*

Documentary evidence to be produced at first hearing.

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced : Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Effect of non-production of documents.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof ; and the Court receiving any such evidence shall record the reasons for so doing.

Rejection of irrelevant or inadmissible documents.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Endorsements on documents admitted in evidence.

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted ;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Endorsements on copies of admitted entries in books, accounts and records.

5. (1) Save in so far as is otherwise provided by the Bankers' Book's Evidence Act, 1891, where a document admitted in evidence in the suit is <sup>xviii</sup> of 1891. an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(The First Schedule. Order XIII.—*Production, Impounding and Return of Documents.*)

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Endorsements on documents rejected as inadmissible in evidence.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

Recording of admitted and return of rejected documents.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Court may order any document to be impounded.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

Return of admitted documents.

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the



(*The First Schedule. Order XIII.—Production, Impounding and Return of Documents. Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*)

proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which, by force of the decrees, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Court may send for papers from its own records or from other Courts.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

#### ORDER XIV.

*Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*

Framing of issues.

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds : (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(The First Schedule. Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Issues of law and of fact.

3. The Court may frame the issues from all or any of the following materials :—

Materials from which issues may be framed.

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties ;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit ;

(c) the contents of documents produced by either party.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Court may examine witnesses or documents before framing issues.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

Power to amend, and strike out, issues.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

Questions of fact or law may by agreement be stated in form of issues.

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement ;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct ; or

(*The First Schedule. Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon. Order XV.—Disposal of the Suit at the first hearing.*)

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith may pronounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court ;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement ; and, upon the judgment so pronounced, a decree shall follow.

#### ORDER XV.

##### *Disposal of the Suit at the first hearing.*

Parties not at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several defendants not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

Parties at issue.

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit :

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

(*The First Schedule. Order XV.—Disposal of the Suit at the first hearing.*  
*Order XVI.—Summoning and Attendance of Witnesses.*)

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

Failure to  
produce  
evidence.

## ORDER XVI.

### *Summoning and Attendance of Witnesses.*

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Summons to  
attend to  
give evidence  
or produce  
documents.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of  
witness to be  
paid into  
Court on  
applying for  
summons.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Experts.

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Scale of  
expenses.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of  
expenses to  
witness.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Procedure  
where  
insufficient  
sum paid in.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period,

Expenses of  
witnesses  
detained more  
than one day.

*(The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.)*

and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place and purpose of attendance to be specified in summons.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document.  
Summons how served.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed

*(The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.)*

on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

If witness appears, attachment may be withdrawn.

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Mode of attachment.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Court may of its own accord summon as witnesses strangers to suit.

*(The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.)*

Duty of persons summoned to give evidence or produce document.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

When they may depart

16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application of rules 10 to 13.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

No witness to be ordered to attend in person unless resident within certain limits.

19. No one shall be ordered to attend in person to give evidence unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

Consequence of refusal of party to give evidence when called on by Court.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

(*The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.*

*Order XVII.—Adjournments. Order XVIII.—Hearing of the Suit and Examination of Witnesses.*)

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

## ORDER XVII.

### *Adjournments.*

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Court may grant time and adjourn hearing.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit

Procedure if parties fail to appear on day fixed.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

Court may proceed notwithstanding either party fails to produce evidence, etc.

## ORDER XVIII.

### *Hearing of the Suit and Examination of Witnesses.*

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Right to begin.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Statement and production of evidence.



(*The First Schedule Order XVIII.—Hearing of the Suit and Examination of Witnesses.*)

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Evidence where several issues.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

How evidence shall be taken in appealable cases.

<sup>15</sup>. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

When deposition to be interpreted.

<sup>16</sup>. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

Evidence under section 138.

<sup>17</sup>. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

Memorandum when evidence not taken down by Judge.

<sup>18</sup>. Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

When evidence may be taken in English.

<sup>19</sup>. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

<sup>1</sup> The provisions of rules 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16, so far as they relate to the manner of taking evidence, are not applicable to the Chief Court of Oudh, *see* the Oudh Courts Act, 1925 (U. F. 4 of 1925), s. 16 (2).

(The First Schedule. Order XVIII.—Hearing of the Suit and Examination of Witnesses.)

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

Any particular question and answer may be taken down.

<sup>1</sup>11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Questions objected to and allowed by Court.

12. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Remarks on demeanour of witnesses.

<sup>1</sup>13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

Memorandum of evidence in unappealable cases.

<sup>1</sup>14. (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Judge unable to make such memorandum to record reasons of his inability.

(2) Every memorandum so made shall form part of the record.

<sup>1</sup>15. (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

Power to deal with evidence taken before another Judge.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

<sup>1</sup>16. (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Power to examine witness immediately.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

<sup>1</sup> See footnote 1 on preceding page.

(The First Schedule. Order XVIII.—Hearing of the Suit and Examination of Witnesses. Order XIX.—Affidavits. Order XX.—Judgment and Decree.)

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Court may recall and examine witness.

Power of Court to inspect.

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

## ORDER XIX.

### *Affidavits.*

Power to order any point to be proved by affidavit.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of deponent or cross-examination.

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

Matters to which affidavits shall be confined.

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

## ORDER XX.

### *Judgment and Decree.*

Judgment when pronounced.

11. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

<sup>1</sup> The provisions of rules 1, 3, 4 and 5 are not applicable to the Chief Court of Oudh, see the Oudh Courts Act, 1925 (U. P. 4 of 1925), s. 16 (2).

*(The First Schedule. Order XX.—Judgment and Decree.)*

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

Power to pronounce judgment written by Judge's predecessor.

13. The Judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

Judgment to be signed.

14. (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

Judgments of Small Cause Courts.

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Judgments of other Courts

15. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Court to state its decision on each issue.

6. (1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

Contents of decree.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Date of decree.

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate

Procedure where Judge has vacated office before signing decree.

9. Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for recovery of immoveable property.

<sup>1</sup> See footnote 1 on preceding page.

*(The First Schedule. Order XX.—Judgment and Decree.)*

Decree for delivery of moveable property.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree may direct payment by instalments.

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Order, after decree, for payment by instalments.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Decree for possession and mesne profits.

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

- (a) for the possession of the property;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
  - (i) the delivery of possession to the decree-holder.
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or
  - (iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Decree in administration suit.

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with

*(The First Schedule. Order XX.—Judgment and Decree.)*

respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

Decree in pre-emption-suit.

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for dissolution of partnership.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Decree in suit for account between principal and agent.

(The First Schedule. Order XX.—Judgment and Decree. Order XXI.—  
Execution of Decrees and Orders. Payment under Decree.)

Special  
directions as  
to accounts.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit  
for partition  
of property  
or separate  
possession of a  
share therein.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required

Decree when  
set-off is  
allowed.

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from  
decree  
relating to  
set-off.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified  
copies of  
judgment  
and decree to  
be furnished.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

## ORDER XXI.

### Execution of Decrees and Orders.

#### Payment under Decree.

Modes of  
paying money  
under decree.

1. (1) All money payable under a decree shall be paid as follows, namely:—

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Payment under Decree. Courts executing Decrees.)

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly. Payment out of Court to decree-holder.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified ; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

<sup>1</sup>(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

*Courts executing Decrees.*

3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure. Lands situate in more than one jurisdiction.

4. Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras <sup>2</sup>[or Bombay], such Court may send to the Court of Small Causes in Calcutta, Madras <sup>2</sup>[or Bombay], as the case may be, the copies and certificates mentioned in rule 6 ; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself. Transfer to Court of Small Causes.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed. Mode of transfer.

6. The Court sending a decree for execution shall send—

(a) a copy of the decree ;

Procedure where Court desires that its own decree shall be executed by another Court.

<sup>1</sup> In the application of the Act to East Punjab, sub-rule (3) has been rep. by the Punjab Relief of Indebtedness Act, 1934 (Pun. 7 of 1934), s. 36.

<sup>2</sup> Subs. by the A. O. 1937 for "Bombay or Rangoon",



(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Courts executing Decrees. Application for execution.)

- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied ; and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, etc., to file same without proof.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Execution by High Court of decree transferred by other Court.

9. Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

#### *Application for execution.*

Application for execution.

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Oral application.

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Written application

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—

- (a) the number of the suit ;
- (b) the names of the parties ;
- (c) the date of the decree ;
- (d) whether any appeal has been preferred from the decree ;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
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- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results ;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed ;
- (h) the amount of the costs (if any) awarded ;
- (i) the name of the person against whom execution of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required, whether—
  - (i) by the delivery of any property specifically decreed ;
  - (ii) by the attachment and sale, or by the sale without attachment of any property ;
  - (iii) by the arrest and detention in prison of any person ;
  - (iv) by the appointment of a receiver ;
  - (v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

12. Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property not in judgment-debtor's possession.

13. Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot—

Application for attachment of immovable property to contain certain particulars.

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers ; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Power to require certified extract from Collector's register in certain cases.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Application for execution.)

Application  
for execution  
by joint  
decree-holder.

15. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application  
for execution  
by transferee  
of decree.

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on  
receiving  
application  
for execution  
of decree

17. (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

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Application for execution.)

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

18. (x) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

Execution in case of cross-decrees.

- (a) if the two sums are equal, satisfaction shall be entered upon both decrees ; and
- (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

- (a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits ; and
- (b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

*Illustrations.*

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A obtains a decree against B for Rs. 1,000. C who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

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Execution in  
case of cross-  
claims under  
same decree.

19. Where application is made to a Court for the execution of a  
from each other, then,—  
decree under which two parties are entitled to recover sums of money

- (a) if the two sums are equal, satisfaction for both shall be entered  
upon the decree ; and,
- (b) if the two sums are unequal, execution may be taken out only  
by the party entitled to the larger sum and for so much  
only as remains after deducting the smaller sum, and satis-  
faction for the smaller sum shall be entered upon the  
decree.

Cross-decrees  
and cross-  
claims in  
mortgage-  
suits.

20. The provisions contained in rules 18 and 19 shall apply to decrees  
for sale in enforcement of a mortgage or charge.

Simultaneous  
execution.

21. The Court may, in its discretion, refuse execution at the same  
time against the person and property of the judgment-debtor.

Notice to  
show cause  
against  
execution in  
certain cases.

22. (1) Where an application for execution is made—

(a) more than one year after the date of the decree, or

(b) against the legal representative of a party to the decree,  
<sup>1</sup>[or where an application is made for execution of a decree filed under the  
provisions of section 44A,] the Court executing the decree shall issue a  
notice to the person against whom execution is applied for requiring him  
to show cause, on a date to be fixed, why the decree should not be executed  
against him:

Provided that no such notice shall be necessary in consequence of  
more than one year having elapsed between the date of the decree and the  
application for execution if the application is made within one year from  
the date of the last order against the party against whom execution is  
applied for, made on any previous application for execution, or in conse-  
quence of the application being made against the legal representative of  
the judgment-debtor, if upon a previous application for execution against  
the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude  
the Court from issuing any process in execution of a decree without issuing  
the notice thereby prescribed if, for reasons to be recorded, it considers  
that the issue of such notice would cause unreasonable delay or would  
defeat the ends of justice.

Procedure  
after issue  
of notice.

23. (1) Where the person to whom notice is issued under the last  
preceding rule does not appear or does not show cause to the satisfaction

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1937 (8 of 1937), s. 3.

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Application for execution. Process for execution. Stay of execution.)

of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

*Process for execution.*

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree. Process for execution.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

25. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court. Endorsement on process.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

*Stay of execution.*

26. (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto. When Court may stay execution.

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may Power to require security from, or

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Stay of execution. Mode of execution.)

impose conditions upon, judgment-debtor

Liability of judgment-debtor discharged

Order of Court which passed decree or of appellate Court to be binding upon Court applied to

Stay of execution pending suit between decree-holder and judgment-debtor.

require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

*Mode of execution.*

Decree for payment of money.

Decree for specific moveable property.

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

31. (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

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Mode of execution.)

32. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced <sup>1</sup>[in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

Decree for specific performance for restitution of conjugal rights or for an injunction.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold ; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

#### *Illustration.*

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution proceedings.

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1923 (29 of 1923), s. 2.



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Mode of execution.)*

Discretion of Court in executing decrees for restitution of conjugal rights.

33. (1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree <sup>1</sup>[against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree <sup>2</sup>[shall be executed in the manner provided in this rule].

(2) Where the Court has made an order under sub-rule (1) \* \* \*, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

Decree for execution of document, or endorsement of negotiable instrument.

34. (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force ; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

“C. D., Judge of the Court of  
(or as the case may be), for A. B., in a suit by E. F. against A. B.”,

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1923 (29 of 1923), s. 3.

<sup>2</sup> Subs. by s. 3, *ibid.*, for “shall not be executed by detention in prison”.

<sup>3</sup> The words “and the decree-holder is the wife” rep. by s. 3, *ibid.*

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and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property. Decree for immovable property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property. Decree for delivery of immovable property when in occupancy of tenant

#### *Arrest and detention in the civil prison.*

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court <sup>1</sup>[shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to Discretionary power to permit judgment-debtor to show cause against detention in prison.

<sup>1</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1936 (21 of 1936), s. 3, for "may".

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Arrest and detention in the civil prison.)

appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

<sup>1</sup>[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Warrant for  
arrest to direct  
judgment-  
debtor to be  
brought up.

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the cost (if any) to which he is liable, be sooner paid.

Subsistence-  
allowance.

39. (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Proceedings  
on appearance  
of judgment-  
debtor in obedi-  
ence to notice  
or after arrest.

<sup>2</sup>[40. (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence

<sup>1</sup> Ins. by the Code of Civil Procedure (Amendment) Act, 1936 (21 of 1936), s. 3.

<sup>2</sup> Subs. by s. 4, *ibid.*, for the original rule 40.

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as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]

#### *Attachment of property.*

41. Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

Examination  
of judgment-  
debtor as to  
his property.

- (a) the judgment-debtor, or
- (b) in the case of a corporation, any officer thereof, or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree ; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

42. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment in  
case of decree  
for rent or  
mesne profits or  
other matter,  
amount of  
which to be  
subsequently  
determined.

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Attachment of property.)

Attachment  
of moveable  
property,  
other than  
agricultural  
produce, in  
possession of  
judgment-  
debtor.

43. Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment  
of agricultural  
produce,—

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Provisions as  
to agricultural  
produce under  
attachment.

45. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Attachment of property.)

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other moveable property not in possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

Attachment of debt, share and other property not in possession of judgment-debtor.

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court ;
- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;
- (iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of share in moveables.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Attachment of property.)

Attachment of salary or allowances of public officer or servant of railway company or local authority.

48. (1) Where the property to be attached is the salary or allowances of a <sup>1</sup>[servant of the Crown] or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as <sup>2</sup>[the appropriate Government may by notification<sup>3</sup> in the Official Gazette] appoint <sup>4</sup>[in this behalf,—

- (a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;
- (b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.]

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by <sup>5</sup>[the appropriate Government] in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind <sup>6</sup>[the appropriate Government] or the railway company

<sup>1</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1943 (5 of 1943), s. 3, for "public officer".

<sup>2</sup> Subs. by the Repealing and Amending Act, 1942 (25 of 1942), s. 3 and Sch. II, for "the Central Govt. or the Provincial Govt. may by notification in their official Gazette" which had been subs. by the A. O. 1937 for "the Govt. may, by notification in the Gazette of India or in the local official Gazette, as the case may be".

<sup>3</sup> For such notifications, see Gen. R. & O., Supplementary Vol. I, pp. 781-782; and *ibid.*, Supplementary Vol. VI, pp. 254-261.

<sup>4</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1939 (26 of 1939), s. 2, for the original words.

<sup>5</sup> Subs. by Act, 25 of 1942, s. 3 and Sch. II, for "the Central Govt. or the Provincial Govt., as the case may be" which had been subs. by the A. O. 1937 for "the Govt."

<sup>6</sup> Subs. by s. 3 and Sch. II, *ibid.*, for "the Central Govt. or the Provincial Govt." which had been subs. by the A. O. 1937 for "the Govt."

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Attachment of property.)

or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of <sup>1</sup>[the Provinces] or local authority in <sup>1</sup>[the Provinces]; and <sup>2</sup>[the appropriate Government] or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

<sup>3</sup>[Explanation.—In this rule “appropriate Government” means—

- (i) as respects any <sup>4</sup>[person] in the service of the Central Government, or any servant of a Federal Railway or of a cantonment authority or of the port authority of a major port, the Central Government ;
- (ii) <sup>5</sup> \* \* \* \* \*
- (iii) as respects any other <sup>4</sup>[servant of the crown] or a servant of any other railway or local authority, the Provincial Government.]

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such. Attachment of partnership property.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within <sup>1</sup>[the Provinces].

<sup>1</sup> Subs. by the A. O. 1948 for “British India”.

<sup>2</sup> Subs. by the Repealing and Amending Act, 1942 (25 of 1942), s. 3 and Sch. II, for “the Central Govt. or the Provincial Govt.” which had been subs. by the A. O. 1937 for “the Govt.”.

<sup>3</sup> Ins. by s. 3 and Sch. II, *ibid*.

<sup>4</sup> Subs. by the Code of Civil Procedure (Amendment) Act, 1943 (5 of 1943), s. 3, for “public officer”.

<sup>5</sup> Cl. (ii) rep. by the A. O. 1948.



(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Attachment of property.)

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within <sup>1</sup>[the Provinces].

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Execution of  
decree  
against firm

50. (1) Where a decree has been passed against a firm, execution may be granted—

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Indian Contract Act, IX of 1872. 1872.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

Attachment  
of negotiable  
instruments.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Attachment  
of property  
in custody of  
Court or  
public officer.

52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Attachment of property.)

dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,— Attachment of decrees.

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Attachment of property.)*

Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Attachment  
of immove-  
able property.

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

Removal of  
attachment  
after satis-  
faction of  
decree.

55. Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Order for  
payment of  
coin or cur-  
rency notes to  
party entitled  
under decree.

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Determina-  
tion of  
attachment.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Investigation of claims and objections.)

*Investigation of claims and objections.*

58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to property attached.

62. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Continuance of attachment subject to claim of incumbrancer.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale generally.)

*Sale generally.*

Power to  
order property  
attached to be  
sold and pro-  
ceeds to be  
paid to person  
entitled.

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Sales by  
whom con-  
ducted and  
how made

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Proclamation  
of sales by  
public  
auction.

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner herein-before prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of  
making  
proclamation.

67. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale generally.)

(2) Where the Court so directs, such proclamation shall also be published in the <sup>1</sup>[Official Gazette] or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Save in the case of property of the kind described in the Time of sale. proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

69. (1) The Court may, in its discretion, adjourn any sale here- Adjournment or stoppage of sale. under to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case Saving of certain sales in which the execution of a decree has been transferred to the Collector.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money. Defaulting purchaser answerable for loss on re-sale.

72. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property. Decree-holder not to bid for or buy property without permission.

<sup>1</sup> Subs. by the A. O. 1937 for "local official Gazette".

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale generally. Sale of moveable property.)

Where decree-holder purchases, amount of decree may be taken as payment.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

Restriction on bidding or purchase by officers.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for acquire or attempt to acquire any interest in the property sold.

*Sale of moveable property.*

Sale of agricultural produce.

74. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed whatever price may be offered for the produce.

Special provisions relating to growing crops.

75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale of moveable property.)

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Negotiable  
instruments  
and shares in  
corporations.

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

Sale by  
public  
auction

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

78. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Irregularity  
not to vitiate  
sale, but any  
person injured  
may sue.

79. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

Delivery of  
moveable  
property,  
debts  
and shares.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other



(*The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale of moveable property. Sale of immoveable property.*)

proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:—

A. B. by C. D., Judge of the Court of (*or as the case may be*), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

*Sale of immoveable property.*

What Courts may order sales.

82. Sales of immoveable property in executing of decrees may be ordered by any Court other than a Court of Small Causes.

Postponement of sale to enable judgment-debtor to raise amount of decree.

83. (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court;

(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale of immoveable property.)

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

Deposit by purchaser and re-sale on default.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Time for payment in full of purchase-money.

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale.

88. Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Bid of co-sharer to have preference.

89. (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

Application to set aside sale on deposit.

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.  
Sale of immoveable property.)*

was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Application to  
set aside sale  
on ground of  
irregularity  
or fraud.

90. (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

Application  
by purchaser  
to set aside  
sale on ground  
of judgment-  
debtor having  
no saleable  
interest.

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Sale when to  
become abso-  
lute or be set  
aside.

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

Return of  
purchase-  
money in  
certain cases.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Certificate to  
purchaser.

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name

(*The First Schedule. Order XXI.—Execution of Decrees and Orders. Sale of immoveable property. Resistance to delivery of possession to decree-holder or purchaser.*)

of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of judgment-debtor.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Delivery of property in occupancy of tenant.

*Resistance to delivery of possession to decree-holder or purchaser.*

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

Resistance or obstruction to possession of immoveable property.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

Resistance or obstruction by judgment-debtor.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or

Resistance or obstruction by *bona fide* claimant.

(The First Schedule. Order XXI.—Execution of Decrees and Orders. Resistance to delivery of possession to decree-holder or purchaser. Order XXII.—Death, Marriage and Insolvency of Parties.)

on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

Dispossession  
by decree-  
holder or  
purchaser.

100. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

*Bonâ fide*  
claimant to  
be restored  
to possession

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

Rules not  
applicable to  
transferee  
*lité pendente*.

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Orders  
conclusive  
subject to  
regular suit.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

## ORDER XXII.

### *Death, Marriage and Insolvency of Parties.*

No abatement  
by party's  
death if right  
to sue survives.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Procedure  
where one of  
several plain-  
tiffs or defen-  
dants dies  
and right to  
sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in  
case of death  
of one of  
several plain-  
tiffs or sole  
plaintiff.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal repre-

(The First Schedule. Order XXII.—Death, Marriage and Insolvency of Parties.)

sentative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

Procedure in case of death of one of several defendants or of sole defendant.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

Determination of question as to legal representative

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

No abatement by reason of death after hearing.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

Suit not abated by marriage of female party.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

When plaintiff's insolvency bars suit.

(The First Schedule. Order XXII.—Death, Marriage and Insolvency of Parties. Order XXIII.—Withdrawal and Adjustment of Suits.)

Procedure where assignee fails to continue suit or give security.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877, XV of 1877, shall apply to applications under sub-rule (2).

Procedure in case of assignment before final order in suit.

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Application of Order to appeals.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of Order to proceedings.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

## ORDER XXIII.

### *Withdrawal and Adjustment of Suits.*

Withdrawal of suit or abandonment of part of claim.

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

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<sup>1</sup> See now the Indian Limitation Act, 1908 (9 of 1908), ss. 4 and 5.

(The First Schedule. Order XXIII.—Withdrawal and Adjustment of Suits. Order XXIV.—Payment into Court.)

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Limitation law not affected by first suit.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Compromise of suit.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

Proceedings in execution of decrees not affected.

## ORDER XXIV.

### *Payment into Court.*

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Deposit by defendant of amount in satisfaction of claim.

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Notice of deposit.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Interest on deposit not allowed to plaintiff after notice.



(The First Schedule. Order XXIV.—Payment into Court. Order XXV.—Security for Costs.)

Procedure where plaintiff accepts deposit as satisfaction in part.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

*Illustrations.*

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV.

*Security for Costs.*

When security for costs may be required from plaintiff.

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of <sup>1</sup>[the Provinces], and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within <sup>1</sup>[the Provinces] other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Residence out of the Provinces.

(2) Whoever leaves <sup>1</sup>[the Provinces] under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of <sup>1</sup>[the Provinces] within the meaning of sub-rule (1).

<sup>1</sup> Subs. by the A. O. 1948 for "British India"

(The First Schedule. Order XXV.—Security for Costs. Order XXVI.—  
Commissions. Commissions to examine witnesses.)

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within <sup>1</sup>[the Provinces].

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom. Effect of failure to furnish security.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for any order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

## ORDER XXVI.

### Commissions.

#### Commissions to examine witnesses.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it. Cases in which Court may issue commission to examine witness.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined. Order for commission.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it. Where witness resides within Court's jurisdiction.

4. (1) Any Court may in any suit issue a commission for the examination of— Persons for whose examination commission may issue.

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) <sup>2</sup>[any person in the service of the Crown] who cannot, in the opinion of the Court, attend without detriment to the public service.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Subs. by the A. O. 1937 for "any civil or military officer of the Govt.".

(The First Schedule. Order XXVI.—Commissions. Commissions to examine witnesses. Commissions for local investigations.)

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission or Request to examine witness not within the Provinces.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within <sup>1</sup>[the Provinces] is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

Court to examine witness pursuant to commission. Return of commission with depositions of witnesses.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

When depositions may be read in evidence.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a <sup>2</sup>[person in the service of the Crown] who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

#### *Commissions for local investigations.*

Commissions to make local investigations.

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute,

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Subs. by the A. O. 1937 for "civil or military officer of the Govt.".

(The First Schedule. Order XXVI.—Commissions. Commissions for local investigations. Commissions to examine accounts. Commissions to make partitions.)

or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the <sup>1</sup>[Provincial Government] has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court. Procedure of Commissioner.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. Report and depositions to be evidence in suit. Commissioner may be examined in person.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

#### *Commissions to examine accounts.*

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment. Commission to examine or adjust accounts.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination. Court to give Commissioner necessary instructions.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit. Proceedings and report to be evidence. Court may direct further inquiry.

#### *Commissions to make partitions*

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree. Commission to make partition of immoveable property.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

*(The First Schedule. Order XXVI.—Commissions. Commissions to make partitions. General provisions.)*

Procedure of  
Commissioner.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

*General provisions.*

Expenses of  
Commission  
to be paid  
into Court.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of  
Commissioners.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance  
and examina-  
tion of wit-  
nesses before  
Commissioner.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this order whether the commission in execution of which they are so required has been issued by

(The First Schedule Order XXVI.—Commissions. General provisions.  
Commissions issued at the instance of Foreign Tribunals.)

a Court situate within or by a Court situate beyond the limits of <sup>1</sup>[the Provinces] and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders. Parties to appear before Commissioner.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

<sup>2</sup>[Commissions issued at the instance of Foreign Tribunals.]

19. (1) If a High Court is satisfied—

- (a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,
- (b) that the proceeding is of a civil nature, and
- (c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

Cases in which High Court may issue commission to examine witness.

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the <sup>3</sup>[Central Government], or
- (b) by a letter of request issued by the foreign Court and transmitted to the High Court through the <sup>3</sup>[Central Government], or
- (c) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

20. The High Court may issue a commission under rule 19—

- (a) upon application by a party to the proceeding before the foreign Court, or

Application for issue of commission.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Rules 19 to 22 and the heading above them were ins. by the Code of Civil Procedure (Amendment) Act, 1932 (10 of 1932), s. 3.

<sup>3</sup> Subs. by the A. O. 1937 for "G. G. in C.".

(The First Schedule. Order XXVI.—Commissions. Commissions issued at the instance of Foreign Tribunals. Order XXVII.—Suits by or against the Government or Public Officers in their official capacity.)

(b) upon an application by a law officer of the <sup>1</sup>[Provincial Government] acting under instructions from the <sup>1</sup>[Provincial Government].

To whom commission may be issued.

21. A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or where <sup>2</sup>\* \* the witness resides within the local limits of <sup>3</sup>[the ordinary original civil jurisdiction of the High Court], to any person whom the Court thinks fit to execute the commission.

Issue, execution and return of commissions, and transmission of evidence to foreign Court

22. The provisions of rules 6, 15, 16, 17 and 18 of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the <sup>4</sup>[Central Government], along with the letter of request for transmission to the foreign Court.]

## ORDER XXVII.

*Suits by or against <sup>5</sup>[the <sup>6</sup>[Government] ] or Public Officers in their official capacity.*

Suits by or against Government.

1. In any suit by or against <sup>7</sup>[the <sup>6</sup>[Government] ], the plaint or written statement shall be signed by such person as <sup>5</sup>[the <sup>6</sup>[Government] ] may, by general or special order, appoint in this behalf, and shall be verified by any person whom <sup>5</sup>[the <sup>6</sup>[Government] ] may so appoint and who is acquainted with the facts of the case.

Persons authorised to act for Government.

2. Persons being *ex-officio* or otherwise authorised to act for <sup>5</sup>[the <sup>6</sup>[Government] ] in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of <sup>5</sup>[the <sup>6</sup>[Government] ].

Plaints in suits by or against Government.

3. In suits by or <sup>8</sup>[against the <sup>6</sup>[Government] ], instead of inserting in the plaint the name and description and place of residence of the

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> The words "the High Court is established under the Indian High Courts Act, 1861, or the G. of I. Act, 1915, and" rep. by the A. O. 1937.

<sup>3</sup> Subs. by the A. O. 1937 for "its ordinary original civil jurisdiction".

<sup>4</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>5</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>6</sup> Subs. by the A. O. 1948 for "Crown".

<sup>7</sup> Subs. by the A. O. 1937 for "the Secretary of State for India in Council".

<sup>8</sup> Subs. by the A. O. 1937 for "against the Secretary of State for India in Council".

(The First Schedule. Order XXVII.—Suits by or against the Government or Public Officers in their official capacity.)

plaintiff or defendant, it shall be sufficient to insert <sup>1</sup>[the appropriate name as provided in section 79 <sup>2</sup>\* \*].

<sup>3</sup>[4. The Crown pleader in any Court shall be the agent of the <sup>4</sup>[Government] for the purpose of receiving processes against the <sup>5</sup>[Government] issued by such Court.] Agent for Government to receive process.

5. The Court, in fixing the day for <sup>6</sup>[the <sup>4</sup>[Government] ] to answer the plaint, shall allow a reasonable time for the necessary communication <sup>7</sup>[with the <sup>4</sup>[Government] ] through the proper channel, and for the issue of instructions to the <sup>8</sup>[Crown pleader] to appear and answer on behalf of <sup>9</sup>[the <sup>4</sup>[Government] ] \* \* \*, and may extend the time at its discretion. Fixing of day for appearance on behalf of Govt.

6. The Court may also, in any case in which the <sup>10</sup>[Crown pleader] is not accompanied by any person on the part of <sup>11</sup>[the <sup>4</sup>[Government] ], who may be able to answer any material questions relating to the suit, direct the attendance of such a person. Attendance of person able to answer questions relating to suit against Government.

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to <sup>12</sup>[the <sup>4</sup>[Government] ] before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel. Extension of time to enable public officer to make reference to Government.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

8. (1) Where <sup>13</sup>[the <sup>4</sup>[Government] ] undertakes the defence of a suit against a public officer, <sup>14</sup>[the Crown pleader], upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits. Procedure in suits against public officer.

(2) Where no application under sub-rule (1) is made by <sup>15</sup>[the Crown pleader] on or before the day fixed in the notice for the

<sup>1</sup> Subs. by the A. O. 1937 for "the words 'the Secretary of State for India in Council'".

<sup>2</sup> The words "or, if the suit is against the Secretary of State, the words 'the Secretary of State'" rep. by the A. O. 1948.

<sup>3</sup> Subs. by the A. O. 1937 for the original rule.

<sup>4</sup> Subs. by the A. O. 1948 for "Crown".

<sup>5</sup> Subs. by the A. O. 1937 for "the Secretary of State for India in Council".

<sup>6</sup> Subs. by the A. O. 1937 for "with the Govt".

<sup>7</sup> Subs. by the A. O. 1937 for "Govt. pleader".

<sup>8</sup> Subs. by the A. O. 1937 for "the said Secretary of State for India in Council".

<sup>9</sup> The words "or the Govt." rep. by the A. O. 1948.

<sup>10</sup> Subs. by the A. O. 1937 for "the Govt".

<sup>11</sup> Subs. by the A. O. 1937 for "the Govt. pleader".



(*The First Schedule. Order XXVII.—Suits by or against the Government or Public Officers in their official capacity. Order XXVIIA.—Suits involving a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder.*)

defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

<sup>1</sup>[8A. No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the <sup>2</sup>[Government] or, where the <sup>2</sup>[Government] has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

8B. In this Order “<sup>2</sup>[Government]” and “Crown pleader” mean respectively—

(a) in relation to any suit by or against <sup>3</sup>\* \* the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order;

\* \* \* \* \*

(c) in relation to any suit by or against a Provincial Government or against a public officer in the service of a Province, the Provincial Government and the Government pleader, or such other pleader as the Provincial Government may appoint, whether generally or specially, for the purposes of this Order.]

#### <sup>5</sup>[ORDER XXVIIA.

*Suits involving a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder.* <sup>26 Geo. 5, c. 2.</sup>

1. In any suit in which it appears to the Court that <sup>6</sup>[any such question as is referred to in sub-section (1) of section 205 of the Government of India Act, 1935], is involved, the Court shall not proceed to determine that question until after notice has been given to the Advocate-General of India if the question of law concerns the Central Government and to the Advocate-General of the Province if the question of law concerns a Provincial Government. <sup>26 Geo. 5, c. 2.</sup>

<sup>1</sup> Rules 8A and 8B ins. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1948 for “Crown”.

<sup>3</sup> The words “the Secretary of State or” rep. by the A. O. 1948.

<sup>4</sup> Cl. (b) rep. by the A. O. 1948.

<sup>5</sup> Order XXVIIA was ins. by the Code of Civil Procedure (Amendment) Act, 1942 (23 of 1942), s. 2.

<sup>6</sup> Subs. by the A. O. 1948 for “a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder”.

No security to be required from Govt. or a public officer in certain cases. Definitions of “Government” and “Crown pleader.”

Notice to the Advocate-General.

(The First Schedule. Order XXVIIA.—Suits involving a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder. Order XXVIII.—Suits by or against Military or Naval Men or Airmen.)

26 Geo. 5.  
c. 2.

2. The Court may at any stage of the proceedings order that the Central Government or a Provincial Government shall be added as a defendant in any suit involving <sup>1</sup>[any such question as is referred to in sub-section (1) of section 205 of the Government of India Act, 1935], if the Advocate-General of India or the Advocate-General of the Province as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

Court may  
add Govern-  
ment as party.

3. Where under rule 2 Government is added as a defendant in a suit, the Advocate-General or the Government shall not be entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any special reason otherwise orders.

Costs.

4. In the application of this Order to appeals the word 'defendant' shall be held to include a respondent and the word 'suit' an appeal.]

Application  
of Order to  
Appeals.

## ORDER XXVIII.

### *Suits by or against Military <sup>2</sup>[or Naval] Men <sup>3</sup>[or Airmen].*

1. (1) Where any officer, <sup>4</sup>[soldier, sailor or airman] actually <sup>5</sup>[serving under the Crown] in <sup>6</sup>[such] capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

Officers,  
soldiers,  
sailors or  
airmen who  
cannot obtain  
leave may  
authorise any  
person to sue  
or defend for  
them.

(2) The authority shall be in writing and shall be signed by the officer, <sup>7</sup>[soldier, sailor or airman] in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, <sup>7</sup>[soldier, sailor or airman] is

<sup>1</sup> Subs. by the A. O. 1948 for "a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder".

<sup>2</sup> Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

<sup>3</sup> Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

<sup>4</sup> The words "soldier or airman" were subs. by s. 2 and Sch. I, *ibid.*, for "or soldier"; and the word "sailor" was ins. by Act 35 of 1934, s. 2 and Sch.

<sup>5</sup> Subs. by the A. O. 1937 for "serving the Govt".

<sup>6</sup> Subs. by Act 35 of 1934, s. 2 and Sch., for "a military or air-force". The words "or air-force" had been ins. by Act 10 of 1927, s. 2 and Sch. I.

<sup>7</sup> The words "soldier or airman" were subs. by Act 10 of 1927, s. 2 and Sch. I, for "or soldier" and "or a soldier", and the word "sailor" was ins. by Act 35 of 1934, s. 2, and Sch.

(*The First Schedule. Order XXVIII.—Suits by or against Military or Naval Men or Airmen. Order XXIX.—Suits by or against Corporations.*)

serving in military, <sup>1</sup>[naval,] <sup>2</sup>[or air force] staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, <sup>3</sup>[soldier, sailor or airman] by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, <sup>1</sup>[ship,] detachment or dépôt to which the officer, <sup>3</sup>[soldier, sailor or airman] belongs.

Person so authorised may act personally or appoint pleader.

2. Any person authorised by an officer, <sup>3</sup>[soldier, sailor or airman] to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, <sup>3</sup>[soldier, sailor or airman] could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, <sup>3</sup>[soldier, sailor or airman].

Service on person so authorised, or on his pleader, to be good service.

3. Processes served upon any person authorised by an officer, <sup>3</sup>[soldier, sailor or airman] under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

## ORDER XXIX.

### *Suits by or against Corporations.*

Subscription and verification of pleading

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

<sup>1</sup> Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

<sup>2</sup> Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

<sup>3</sup> The words “soldier or airman” were subs. by s. 2 and Sch. I, *ibid.*, for “or soldier” and “or a soldier”, and the word “sailor” was ins. by Act 35 of 1934, s. 2 and Sch.

(The First Schedule. Order XXIX.—Suits by or against Corporations.  
Order XXX.—Suits by or against Firms and Persons carrying on business  
in names other than their own.)

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

Power to  
require  
personal  
attendance  
of officer of  
corporation.

### ORDER XXX.

*Suits by or against Firms and Persons carrying on business in names other than their own.*

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in <sup>1</sup>[the Provinces] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

Suing of  
partners in  
name of firm.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

Disclosure of  
partners'  
names.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

(The First Schedule. Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own.)

Service.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within <sup>1</sup>[the Provinces] upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without <sup>1</sup>[the Provinces]:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within <sup>1</sup>[the Provinces] whom it is sought to make liable.

Right of suit on death of partner.

4. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872, where two or more persons may sue or be sued <sup>IX of 1872.</sup> in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Notice in what capacity served.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

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<sup>1</sup> Subs. by the A. O. 1948 for "British India".

(*The First Schedule. Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own. Order XXXI.—Suits by or against Trustees, Executors and Administrators. XXXII.—Suits by or against Minors and Persons of Unsound Mind.*)

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared. Appearance under protest.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just. Suits between co-partners.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply. Suit against person carrying on business in name other than his own.

### ORDER XXXI.

#### *Suits by or against Trustees, Executors and Administrators.*

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties. Representation of beneficiaries in suits concerning property vested in trustees, etc.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them: Joinder of trustees, executors and administrators.  
 Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside <sup>1</sup>[the Provinces], need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her. Husband of married executrix not to join.

### ORDER XXXII.

#### *Suits by or against Minors and Persons of Unsound Mind.*

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Minor to sue by next friend.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

*(The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

Where suit is instituted without next friend, plaint to be taken off the file.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

Guardian for the suit to be appointed by Court for minor defendant.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

<sup>1</sup>[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.]

Who may act as next friend or be appointed guardian for the suit.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the

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<sup>1</sup> Ins. by the Code of Civil Procedure (Third Amendment) Act, 1937 (16 of 1937), s. 2.

*(The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

Representa-  
tion of minor  
by next  
friend or  
guardian for  
the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

Receipt by  
next friend  
or guardian  
for the suit  
of property  
under decree  
for minor.

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

Agreement or  
compromise  
by next friend  
or guardian  
for the suit.



*(The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

Retirement of  
next friend.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

Removal of  
next friend.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within '[the Provinces]', or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of  
proceed-  
ing on removal,  
etc., of next  
friend.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Retirement,  
removal or  
death of  
guardian for  
the suit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

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<sup>1</sup> Subs. by the A. O. 1948 for "British India".

(The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application. Course to be followed by minor plaintiff or applicant on attaining majority.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:—

“A. B., late a minor, by C. D., his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit. Where minor co-plaintiff attaining majority desires to repudiate suit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper. Unreasonable or improper suit.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

(*The First Schedule. Order XXXII.—Suits by or against minors and persons of unsound mind. Order XXXIII.—Suits by Paupers.*)

Application of rules to persons of unsound mind.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Saving for Princes and Chiefs.

16. Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of <sup>1</sup>[the Central Government <sup>2</sup>\* \* \* or a Provincial Government] in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

### ORDER XXXIII.

#### *Suits by Paupers.*

Suits may be instituted in *forma pauperis*.

1. Subject to the following provisions, any suit may be instituted by a pauper.

*Explanation.*—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

Contents of application.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Presentation of application.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination of applicant.

4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

<sup>1</sup> Subs. by the A. O. 1937 for “the G. G. in C. or a L. G.”.

<sup>2</sup> The words “or the Crown Representative” rep. by the A. O. 1948.

*(The First Schedule. Order XXXIII.—Suits by Paupers.)*

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

If presented by agent, Court may order applicant to be examined by commission.

5. The Court shall reject an application for permission to sue as a pauper—

1 Rejection of application.

- (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) where his allegations do not show a cause of action, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Notice of day for receiving evidence of applicant's pauperism.

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

Procedure at hearing.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other

Procedure if application admitted.

<sup>1</sup> The provisions of this rule so far as it relates to the making of a memorandum are not applicable to the Chief Court of Oudh, *see* the Oudh Courts Act, 1925 (U. P. 4 of 1925), s. 16 (2).

*(The First Schedule. Order XXXIII.—Suits by Paupers.)*

than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Dispaupering.

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

Costs where pauper succeeds.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the <sup>1</sup>[Provincial Government] from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

Procedure where pauper fails.

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or
- (b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

Procedure where pauper suit abates.

<sup>2</sup>[11A. Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Provincial Government from the estate of the deceased plaintiff.]

Provincial Government may apply for payment of court-fees.

12. The <sup>1</sup>[Provincial Government] shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, <sup>3</sup>[rule 11 or rule 11A].

<sup>1</sup> Subs. by the A. O. 1937 for "Govt."

<sup>2</sup> Ins. by the Code of Civil Procedure (Second Amendment) Act, 1942 (24 of 1942), s. 2.

<sup>3</sup> Subs. by s. 2, *ibid.*, for "or rule 11".

(The First Schedule. Order XXXIII.—Suits by Paupers. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

13. All matters arising between the <sup>1</sup>[Provincial Government] and Provincial any party to the suit under rule 10, rule 11, <sup>2</sup>[rule 11A] or rule 12 shall be deemed to be questions arising between the parties to the suit within a party. the meaning of section 47.

<sup>3</sup>[14. Where an order is made under rule 10, rule 11 or rule 11A, the Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.] Recovery of amount of court-fees.

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the <sup>1</sup>[Provincial Government] and by the opposite party in opposing his application for leave to sue as a pauper. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit. Costs.

#### ORDER XXXIV.

##### *Suits relating to Mortgages of Immoveable Property.*

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage. Parties to suits for foreclosure, sale and redemption.

*Explanation.*—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

<sup>4</sup>[2. (1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree— Preliminary decree in foreclosure

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

- (i) principal and interest on the mortgage,
- (ii) the costs of suit, if any, awarded to him, and
- (iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

<sup>1</sup> Subs. by the A. O. 1937 for "Govt."

<sup>2</sup> Ins. by the Code of Civil Procedure (Second Amendment) Act, 1942 (24 of 1942), s. 2.

<sup>3</sup> Subs. by s. 2, *ibid.*, for the original rule.

<sup>4</sup> Rules 2 to 8 were subs. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 4, for the original rules.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

(c) directing—

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

13. (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

Final decree  
in foreclosure  
suit

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

14. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Preliminary  
decree in suit  
for sale.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

<sup>1</sup> See foot-note 4 to rule 2, *supra*, p. 183.



*(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

Power to  
decree sale in  
foreclosure  
suit.

(3) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree  
in suit for  
sale.

15. (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,  
and, if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree,  
and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

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<sup>1</sup> See foot-note 4 to rule 2, *supra*, p. 183.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

<sup>16.</sup> Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance. Recovery of balance due on mortgage in suit for sale.

<sup>17.</sup> (1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree— Preliminary decree in redemption suit.

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

- (i) principal and interest on the mortgage,
- (ii) the costs of suit, if any, awarded to him, and
- (iii) other costs, charges and expenses properly incurred by him up to that date, in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and

(c) directing—

- (i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10 together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

<sup>1</sup> See foot-note 4 to rule 2, *supra*, p. 183.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

(u) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interests, the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Final decree  
in redemption  
suit.

18. (1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree,  
and, if necessary,—

(a) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,  
and, also, if necessary,—

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for

<sup>1</sup> See foot-note 4 to rule 2, *supra*, p 183.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

<sup>1</sup>[8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.] Recovery of balance due on mortgage in suit for redemption.

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him: and the plaintiff shall, if necessary, be put in possession of the mortgaged property. Decree where nothing is found due or where mortgagee has been over-paid.

<sup>2</sup>[10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to dis-entitle him thereto, add to the mortgage-money such costs of the suit and Costs of mortgagee subsequent to decree.

<sup>1</sup> This rule was ins. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 5.

<sup>2</sup> Subs. by s. 6, *ibid.*, for the original rules 10 and 11.

*(The First Schedule. Order XXXIV—Suits relating to Mortgages of Immoveable Property.)*

other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

Payment of interest.

<sup>1</sup>11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—

- (a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—
  - (i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,
  - (ii) on the amount of the costs of the suit awarded to the mortgagee,—at such rate as the Court deems reasonable from the date of the preliminary decree, and
  - (iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum; and
- (b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—
  - (i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and
  - (ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10.]

12. Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Sale of property subject to prior mortgage

<sup>1</sup> See foot-note 2 on pre-page.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property. Order XXXV.—Interpleader.)

13. (1) Such proceeds shall be brought into Court and applied as Application of proceeds follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

IV of 1882 (2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2. Suit for sale necessary for bringing mortgaged property to sale.

IV of 1882. (2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended.

IV of 1882 <sup>1</sup>[15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882.] Mortgages by the deposit of title-deeds and charges.

## ORDER XXXV.

### *Interpleader.*

1. In every suit of interpleader the plaintiff shall, in addition to other statements necessary for plaints, state— Plaint in interpleader-suit

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

<sup>1</sup> Subs. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 7, for the original rule 15.

*(The First Schedule. Order XXXV.—Interpleader.)*

- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

Payment of  
thing claimed  
into Court.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

Procedure  
where defend-  
ant is suing  
plaintiff.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at  
first hearing.

4. (1) At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or
- (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

- (a) that an issue or issues between the parties be framed and tried, and
- (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and  
tenants may  
not institute  
interpleader-  
suits

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

*Illustrations.*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

(The First Schedule. Order XXXV.—Interpleader. Order XXXVI.—  
Special Case.)

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way. Charge for state case for Court's costs.

## ORDER XXXVI.

### *Special Case.*

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,— Power to state case for Court's opinion.

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement. Where value of subject-matter must be stated.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement. Agreement to be filed and registered as suit.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein. Parties to be subject to Court's jurisdiction.



(The First Schedule. Order XXXVI.—*Special Case. Order XXXVII.—  
Summary Procedure on Negotiable Instruments.*)

Hearing and  
disposal of  
case.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suits so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

(a) that the agreement was duly executed by them,

(b) that they have a *bonâ fide* interest in the question stated therein,  
and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

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ORDER XXXVII.

*Summary Procedure on Negotiable Instruments.*

Application  
of Order.

1. This Order shall apply only to—

(a) the High Courts of Judicature at Fort William, Madras and Bombay ;

1\*                   \*                   \*                   \*                   \*

2\*                   \*                   \*                   \*                   \*                   and

(d) any other Court to which sections 532 to 537 of the Code of XIV of 1882. Civil Procedure, 1882, have been already applied.

Institution of  
summary  
suits upon  
bills of ex-  
change, etc.

2. (1) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaintiff and summons are in such forms, respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend ; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree—

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<sup>1</sup> Cl. (b) rep. by the A. O. 1937.

<sup>2</sup> Cl. (c) which read "the Court of the Judicial Commissioner of Sind" was rep. by the A. O. 1948.

*(The First Schedule. Order XXXVII.—Summary Procedure on  
Negotiable Instruments.)*

XXVI of  
1881.

<sup>1</sup>[(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act, 1881, up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest, if any, as the Court may order under section 34 of this Code; and

(c) for such sum for costs as may be prescribed:

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

(3) A decree passed under this rule may be executed forthwith.]

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or other facts as the Court may deem sufficient to support the application. Defendant showing defence on merits to have leave to appear.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit. Power to set aside decree.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof. Power to order bill, etc., to be deposited with officer of Court.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note. Recovery of cost of noting non-acceptance of dishonoured bill or note.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner. Procedure in suits.

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<sup>1</sup> Subs. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), s. 4, for the original words.

(The First Schedule. Order XXXVIII.—*Arrest and Attachment before Judgment. Arrest before Judgment.*)

### ORDER XXXVIII.

#### *Arrest and Attachment before Judgment.*

##### *Arrest before Judgment.*

Where defendant may be called upon to furnish security for appearance.

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

- (a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—
  - (i) has absconded or left the local limits of the jurisdiction of the Court, or
  - (ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or
  - (iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or
- (b) that the defendant is about to leave <sup>1</sup>[the Provinces] under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

Security. .

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

<sup>1</sup> Subs. by the A. O. 1948 for "British India",

(*The First Schedule. Order XXXVIII.—Arrest and Attachment before Judgment. Arrest before Judgment. Attachment before Judgment.*)

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation. Procedure on application by surety to be discharged

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied: Procedure where defendant fails to furnish security or find fresh security.

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

#### *Attachment before Judgment.*

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,— Where defendant may be called upon to furnish security for production of property.

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified,

*(The First Schedule. Order XXXVIII.—Arrest and Attachment before Judgment. Attachment before Judgment.)*

Attachment where cause not shown or security not furnished.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Mode of making attachment.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Investigation of claim to property attached before judgment.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Removal of attachment when security furnished or suit dismissed.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Property attached before judgment not to be re-attached in execution of decree.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

Agricultural produce not attachable before judgment.

12. Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Small Cause Court not to attach immovable property.

<sup>1</sup>[13. Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property.]

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<sup>1</sup> Ins. by the Small Cause Courts (Attachment of Immovable Property) Act, 1926 (1 of 1926), s. 4.

(The First Schedule. Order XXXIX.—Temporary Injunctions and Interlocutory Orders. Temporary Injunctions.)

### ORDER XXXIX

#### *Temporary Injunctions and Interlocutory Orders.*

#### *Temporary Injunctions.*

1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

Cases in which temporary injunction may be granted.

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

Injunction to restrain repetition or continuance of breach.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction, Court to direct notice to opposite party.

(The First Schedule. Order XXXIX.—Temporary Injunctions and Interlocutory Orders. Temporary Injunctions. Interlocutory Orders.)

Order for injunction may be discharged, varied or set aside.

Injunction to corporation binding on its officers.

4. Any order for an injunction may be discharged, or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

#### Interlocutory Orders.

Power to order interim sale.

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Detention, preservation, inspection, etc., of subject-matter of suit.

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorised to enter under this rule.

Application for such orders to be after notice.

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

When party may be put in immediate possession of land the subject-matter of suit.

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the

(*The First Schedule. Order XXXIX.—Temporary Injunctions and Interlocutory Orders. Interlocutory Orders. Order XL.—Appointment of Receivers.*)

discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

Deposit of  
money, etc.,  
in Court.

## ORDER XL.

### *Appointment of Receivers.*

1. (1) Where it appears to the Court to be just and convenient, the Court may by order—

Appointment  
of receivers.

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Remunera-  
tion.



(The First Schedule. Order XL.—Appointment of receivers. Order XLI.—  
Appeals from Original Decrees.)

## Duties

## 3. Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement  
of receiver's  
duties.

## 4. Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

When  
Collector may  
be appointed  
receiver

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

## ORDER XLI.

*Appeals from Original Decrees.*Form of  
appeal.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

What to  
accompany  
memoran-  
dum.Contents of  
memoran-  
dum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

Grounds  
which  
may be taken  
in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall

(The First Schedule. Order XLI.—*Appeals from Original Decrees.—*  
*Stay of proceedings and of execution.*)

not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there Rejection or amendment of memorandum.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

*Stay of proceedings and of execution.*

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree. Stay by Appellate Court.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed. Stay by Court which passed the decree.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(The First Schedule. Order XLI.—*Appeals from Original Decrees.—Stay of proceedings and of execution. Procedure on admission of appeal.*)

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

Security in case of order for execution of decree appealed from.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

17. [No security to be required from the Government or a public officer in certain cases.] *Rep. by the A. O. 1937.*

Exercise of powers in appeal from order made in execution of decree.

8. The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

#### *Procedure on admission of appeal.*

Registry of memorandum of appeal

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals.

(2) Such book shall be called the Register of Appeals.

Appellate Court may require appellant to furnish security for costs.

10. (1) The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of the Provinces.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of <sup>1</sup>[the Provinces], and is not possessed of any sufficient immovable property within <sup>2</sup>[the Provinces] other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

<sup>1</sup> See Order XXVII, rule 8A, *supra*.

<sup>2</sup> Subs. by the A. O. 1948 for "British India",

*(The First Schedule. Order XLI.—Appeals from Original Decrees.  
Procedure on admission of appeal.)*

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

Power to dismiss appeal without sending notice to Lower Court.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

Day for hearing appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Appellate Court to give notice to Court whose decree appealed from.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

Copies of exhibits in Court whose decree appealed from.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Publication and service of notice of day for hearing appeal.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

Appellate Court may itself cause notice to be served.

(The First Schedule. Order XLI.—Appeals from Original Decrees.  
Procedure on admission of appeal. Procedure on hearing.)

Contents of  
notice.

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

*Procedure on hearing.*

Right to  
begin.

16. (1) on the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Dismissal of  
appeal for  
appellant's  
default.

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Hearing  
appeal *ex  
parte*.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Dismissal of  
appeal where  
notice not  
served in  
consequence  
of appellant's  
failure to  
deposit costs.

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed:

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

Re-admission  
of appeal  
dismissed for  
default.

19. Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Power to  
adjourn hear-  
ing and direct  
persons  
appearing  
interested to  
be made  
respondents.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

Re-hearing on  
application of  
respondent  
against whom  
*ex parte*  
decree made.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal

*(The First Schedule. Order XLI.—Appeals from Original Decrees.  
Procedure on hearing.)*

on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Upon hearing respondent may object to decree as if he had preferred separate appeal.

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Form of objection and provisions applicable thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Remand of case by Appellate Court.

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resetting the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Where evidence on record sufficient, Appellate Court may determine case finally.

*(The First Schedule. Order XLI.—Appeals from Original Decrees.  
Procedure on hearing. Judgment in appeal.)*

Where  
Appellate  
Court may  
frame issues  
and refer  
them for trial  
to Court  
whose decree  
appealed  
from.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required ;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

Findings and  
evidence to  
be put on  
record.  
Objections  
to finding.  
Determina-  
tion of appeal.

26. (1) Such evidence and findings shall form part of the record in the suit ; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Production of  
additional  
evidence in  
Appellate  
Court.

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Mode of  
taking  
additional  
evidence.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Points to be  
defined and  
recorded.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

*Judgment in appeal.*

Judgment  
when and  
where  
pronounced.

30. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either

(The First Schedule. Order XLI.—*Appeals from Original Decrees.*

*Judgment in appeal. Decree in appeal.*)

at once or on some future day of which notice shall be given to the parties or their pleaders.

31. The judgment of the Appellate Court shall be in writing and shall state—

Contents,  
date and  
signature of  
judgment.

- (a) the points for determination ;
- (b) the decision thereon ;
- (c) the reasons for the decision ; and,
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled ;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

What judg-  
ment may  
direct.

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection :

Power of  
Court of  
Appeal.

<sup>1</sup>[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

#### *Illustration.*

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decide in favour of X. It has power to pass a decree against Y.

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same

Dissent to be  
recorded

#### *Decree in appeal.*

35. (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

Date and  
contents of  
decree.

<sup>1</sup> Ins. by s. 4 of the Civil Procedure (Amendment) Act, 1922 (9 of 1922), which, under s. 1 (2) thereof, may be brought into force in any Province by the Provincial Government on any specified date. The Act has been brought into force in Bombay, Bengal, U. P., Punjab, Bihar, C. P., Assam and Orissa.

<sup>2</sup> This rule is not applicable to the Chief Court of Oudh in the exercise of its appellate jurisdiction ; see the Oudh Courts Act, 1925 (U. P. 4 of 1925), s. 16 (3).



(*The First Schedule. Order XLI.—Appeals from Original Decrees. Decree in appeal. Order XLII.—Appeals from Appellate Decrees. Order XLIII.—Appeals from Orders*)

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it :

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed from.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

## ORDER XLII.

### *Appeals from Appellate Decrees.*

Procedure.

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

## ORDER XLIII.

### *Appeals from Orders.*

Appeals from orders.

1. An appeal shall lie from the following orders under the provisions of section 104, namely :—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court ;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party ;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ;

*(The First Schedule. Order XLIII.—Appeals from Orders.)*

- (e) an order under rule 4 of Order X pronouncing judgment against a party ;
- (f) an order under rule 21 of Order XI ;
- (g) an order under rule 10 of Order XVI for the attachment of property ;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party ;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement ;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale ;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit ;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave ;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction ;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;
- (o) an order <sup>1</sup>[under rule 2, rule 4 or rule 7] of Order XXXIV refusing to extend the time for the payment of mortgage-money ;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV ;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII ;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX ;
- (s) an order under rule 1 or rule 4 of Order XL ;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal ;
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court ;
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV ;
- (w) an order under rule 4 of Order XLVII granting an application for review.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

Procedure.

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<sup>1</sup> Subs. by the Transfer of Property (Amendment) Supplementary Act, 1930 (16 of 1930), s. 2, for " under rule 3 or rule 8 ".

(The First Schedule. Order XLIV.—*Pauper Appeals.* Order XLV.—*Appeals to the 'King in Council.*)

### ORDER XLIV.

#### *Pauper Appeals.*

Who may  
appeal as  
pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable :

Procedure on  
application  
for admission  
of appeal.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into  
pauperism.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

### ORDER XLV.

#### *Appeals to the 'King in Council.*

" Decree " defined.

1. In this Order, unless there is something repugnant in the subject or context, the expression " decree " shall include a final order.

Application  
to Court  
whose  
decree com-  
plained of.

2. Whoever desires to appeal to 'His Majesty in Council shall apply by petition to the Court whose decree is complained of.

Certificate as  
to value or  
fitness.

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to 'His Majesty in Council.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Consolidation  
of suits.

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated : but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

<sup>1</sup> See foot note 1 on page 47 *Supra*.

(The First Schedule. Order XLV.—Appeals to the <sup>1</sup>King in Council.)

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to <sup>1</sup>His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Remission of dispute to Court of first instance.

6. Where such certificate is refused, the petition shall be dismissed.

Effect of refusal of certificate.

7. (1) Where the certificate is granted, the applicant shall, within <sup>2</sup>[ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow] from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

Security and deposit required on grant of certificate.

(a) furnish security <sup>3</sup>[in cash or in Government securities] for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to <sup>1</sup>His Majesty in Council a correct copy of the whole record of the suit, except—

(1) formal documents directed to be excluded by any Order of <sup>1</sup>His Majesty in Council in force for the time being ;

(2) papers which the parties agree to exclude ;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included ; and

(4) such other documents as the High Court may direct to be excluded :

<sup>3</sup>[Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished :

Provided, further, that no adjournment shall be granted to an opposite party to contest the nature of such security.]

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also within the time mentioned in sub-rule (1) deposit the amount required to defray the expense of printing such copy.

<sup>1</sup>See foot note 1 on page 47 *Supra*.

<sup>2</sup> Subs. by the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), s. 3, for "six months".

<sup>3</sup> Ins. by s. 3, *ibid*.

*(The First Schedule. Order XLV.—Appeals to the King in Council.)*

Admission of  
appeal and  
procedure  
thereon.

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation  
of acceptance  
of security

9. At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to  
dispense with  
notices in  
case of  
deceased  
parties

<sup>2</sup>[9A. Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court :

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court-house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct.]

Power to  
order further  
security or  
payment

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to His Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of  
failure to  
comply with  
order.

11. Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of His Majesty in Council.

and in the meantime execution of the decree appealed from shall not be stayed.

Refund of  
balance  
deposit.

12. When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

<sup>1</sup> See foot note 1 on page 47 *Supra*

<sup>2</sup> Ins. by the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), s. 4.

(*The First Schedule. Order XLV.—Appeals to the 'King in Council.*)

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs. Powers of Court pending appeal

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which 'His Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which 'His Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security. Increase of security found inadequate.

(2) In default of such further security being furnished as required by the Court,—

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security ;

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. (1) Whoever desires to obtain execution of any order of 'His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to 'His Majesty was preferred. Procedure to enforce orders of 'King in Council

(2) Such Court shall transmit the order of 'His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as 'His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for

<sup>1</sup> See foot note 1 on page 47 *Supra*.

(The First Schedule. Order XLV.—*Appeals to the King in Council. Order XLVI.—Reference.*)

the execution of the same ; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order \* \* \* for the adjustment of financial transactions between the Imperial and the Indian Governments.

<sup>3</sup>[(4) Unless His Majesty in Council is pleased otherwise to direct, no order of His Majesty in Council shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.]

Appeal from  
order relating  
to execution.

16. The orders made by the Court which executes the order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

17. [*Appeals to Federal Court.*] Rep. by the Federal Court Act, 1941 (XXI of 1941), s. 2.

## ORDER XLVI.

### Reference.

Reference of  
question to  
High Court.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Court may  
pass decree  
contingent  
upon decision  
of High  
Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred ;  
but no decree or order shall be executed in any case in which such

<sup>1</sup> See foot note 1 on page 47 *Supra*.

<sup>2</sup> The words " by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury " rep. by the A. O. 1937.

<sup>3</sup> Ins by the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), s. 5.

*(The First Schedule. Order XLVI.—Reference.)*

reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment of High Court to be transmitted, and case disposed of accordingly.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Costs of reference to High Court.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to alter, etc., decree of Court making reference.

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

Power to refer to High Court questions as to jurisdiction in small causes.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.



## (The First Schedule. Order XLVII.—Review.)

## ORDER XLVII.

## Review.

Application  
for review of  
judgment.

1. (1) Any person considering himself aggrieved—  
 (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,  
 (b) by a decree or order from which no appeal is allowed, or  
 (c) by a decision on a reference from a Court of Small Causes,  
 and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom  
applications  
for review  
may be  
made.

2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed ; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

Form of  
applications  
for review.  
Application  
where  
rejected.  
Application  
where  
granted.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same :

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for ; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was

*(The First Schedule. Order XLVII.—Review.)*

not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application for review in Court consisting of two or more Judges.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

Application where rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

Order of rejection not appealable. Objections to order granting application.

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Registry of application granted, and order for re-hearing.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Bar of certain applications.

(The First Schedule. Order XLVIII.—*Miscellaneous.* Order XLIX.—*Chartered High Courts.*)

### ORDER XLVIII.

#### *Miscellaneous*

Process to be served at expense of party issuing  
Costs of service

Orders and notices how served

Use of forms in appendices

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

### ORDER XLIX.

#### *Chartered High Courts*

Who may serve processes of High Courts

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

Saving in respect of Chartered High Courts

2. Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

Application of rules

3. The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely :—

- (1) rule 10 and rule 11, clauses (b) and (c), of Order VII ;
- (2) rule 3 of Order X ;
- (3) rule 2 of Order XVI ;
- (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII ;
- (5) rules 1 to 8 of Order XX ; and
- (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum) ;

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

(The First Schedule. Order L.—Provincial Small Cause Courts. Order LI.—Presidency Small Cause Courts. Appendix A.—Pleadings.)

## ORDER L.

*Provincial Small Cause Courts.*

IX of 1887. 1. The provisions hereinafter specified shall not extend to Courts con- Provincial  
stituted under the Provincial Small Cause Courts Act, 1887, <sup>1</sup>[or under Small Cause  
the Berar Small Cause Courts Law, 1905] or to Courts exercising the Courts  
jurisdiction of a Court of Small Causes <sup>2</sup>[under the said Act or Law],  
that is to say—

(a) so much of this schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits ;

(ii) the execution of decrees against immoveable property or the interest of a partner in partnership property ;

(iii) the settlement of issues ; and

(b) the following rules and orders,—

Order II, rule 1 (frame of suit) ;

Order X, rule 3 (record of examination of parties) ;

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment ;

Order XVIII, rules 5 to 12 (evidence) ;

Orders XLI to XLV (appeals) ;

Order XLVII, rules 2, 3, 5, 6, 7 (review) ;

Order LI.

## ORDER LI.

*Presidency Small Cause Courts.*

XV of 1882. 1 Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Presidency  
Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts  
Cause Courts Act, 1882, this schedule shall not extend to any suit or  
proceeding in any Court of Small Causes established in the towns of  
Calcutta, Madras and Bombay.

## APPENDIX A.

## PLEADINGS.

## (I) TITLES OF SUITS

IN THE COURT OF

A. B. (*add description and residence*) . . . Plaintiff,

*against*

C. D. (*add description and residence*) . . . Defendant.

<sup>1</sup> Ins by the Berar Laws Act, 1941 (4 of 1941), s. 2 and Sch III.

<sup>2</sup> Subs by s. 2 and Sch III, *ibid*, for "under that Act".

*(The First Schedule. Appendix A.—Pleadings.)*

## (2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

[The Secretary of State or the Federation of India or the Province of  
 , as the case may be.]

The Advocate General of \_\_\_\_\_

The Collector of \_\_\_\_\_

The State of \_\_\_\_\_

The A. B. Company, Limited, having its registered office at  
 A. B., a public officer of the C. D. Company.

A. B. (*add description and residence*), on behalf of himself and all other  
 creditors of C. D., late of (*add description and residence*).

A. B. (*add description and residence*), on behalf of himself and all other  
 holders of debentures issued by the  
 Company, Limited,

The Official Receiver. \_\_\_\_\_

A. B., a minor (*add description and residence*), by C. D. [*or by the*  
 Court of Wards], his next friend.

A. B. (*add description and residence*), a person of unsound mind [*or*  
 of weak mind], by C. D., his next friend.

A. B., a firm carrying on business in partnership at \_\_\_\_\_

A. B. (*add description and residence*) by his constituted attorney  
 C. D. (*add description and residence*).

A. B. (*add description and residence*), Shebait of Thakur.

A. B. (*add description and residence*), executor of C. D., deceased.

A. B. (*add description and residence*), heir of C. D., deceased.

## (3) PLAINTS.

## No. I.

## MONEY LENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

- i. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he lent the defendant  
 rupees repayable on the \_\_\_\_\_ day of \_\_\_\_\_

---

<sup>1</sup> Subs. by the A. O. 1937 for "The Secretary of State for India in Council",

*(The First Schedule. Appendix A.—Pleadings.)*

2. The defendant has not paid the same, except rupees paid  
on the day of 19 .

[If the plaintiff claims exemption from any law of limitation, say :—]

3. The plaintiff was a minor [or insane] from the day of  
till the day of

4. [Facts showing when the cause of action arose and that the Court  
has jurisdiction.]

5. The value of the subject-matter of the suit for the purpose of  
jurisdiction is rupees and for the purpose of court-fees is  
rupees.

6. The plaintiff claims rupees, with interest at per  
cent. from the day of 19 .

---

No. 2.

MONEY OVERPAID.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff  
agreed to buy and the defendant agreed to sell bars of silver  
at annas per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by E. F., who  
was paid by the defendant for such assay, and E. F. declared each of the  
bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid  
the defendant rupees.

3. Each of the said bars contained only 1,200 tolas of fine silver, of  
which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[As in paras. 4 and 5 of Form No. 1, and Relief Claimed.]

---

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E. F. sold  
and delivered to the defendant [one hundred barrels of flour, or the goods  
mentioned in the schedule hereto annexed, or sundry goods].

2. The defendant promised to pay rupees for the said goods  
on delivery [or on the day of , some day before  
the plaint was filed].

3. He has not paid the same.

4. E. F. died on the day of 19  
By his last will he appointed his brother, the plaintiff, his executor.

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff as executor of E. F. claims [Relief claimed].

---

*(The First Schedule. Appendix A.—Pleadings.)*

## No. 4.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19     , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. The goods were reasonably worth                      rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

---

## No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19     , E. F. agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that E. F. should pay for the goods on delivery rupees.

2. The plaintiff made the goods, and on the                      day of                      19     , offered to deliver them to E. F., and has ever since been ready and willing so to do.

3. E. F. has not accepted the goods or paid for them.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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## No. 6.

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19     , the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be resold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of                      rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.

5. On the                      day of                      19     , the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for                      rupees.

*(The First Schedule. Appendix A.—Pleadings.)*

6. The expenses attendant upon such re-sale amounted to                      rupees.  
 7. The defendant has not paid the deficiency thus arising, amounting  
 to                      rupees.  
*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 7.

## SERVICES AT A REASONABLE RATE.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. Between the                      day of                      19                      , and  
 the                      day of                      19                      , at                      , plaintiff  
 the *[executed sundry drawings, designs and diagrams]* for the defendant,  
 at his request; but no express agreement was made as to the sum to be paid  
 for such services.

2. The services were reasonably worth                      rupees.

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 8.

## SERVICES AND MATERIALS AT A REASONABLE COST.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19                      , at                      ,  
 the plaintiff built a house [known as No.                      , in                      ],  
 and furnished the materials therefor, for the defendant, at his request, but  
 no express agreement was made as to the amount to be paid for such work  
 and materials.

2. The work done and materials supplied were reasonably worth  
                     rupees.

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 9.

## USE AND OCCUPATION.

*(Title.)*

A. B., the above-named plaintiff, executor of the will of X. Y.,  
 deceased, states as follows:—

1. That the defendant occupied the [house No.                      ,  
                     Street], by permission of the said X. Y., from the                      day of  
                     19                      , until the                      day of                      19                      .  
 and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably  
 worth                      rupees.

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff as executor of X. Y. claims *[Relief claimed]*.



*(The First Schedule. Appendix A.—Pleadings.)*

No. 10.

ON AN AWARD.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.
2. On the                      day of                      19   , the arbitrators awarded that the defendant should [pay the plaintiff                      rupees].
3. The defendant has not paid the money.  
[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 11.

ON A FOREIGN JUDGMENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , at in the State [or Kingdom] of                     , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff                      rupees, with interest from the said date.
2. The defendant has not paid the money.  
[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 12.

AGAINST SURÈTY FOR PAYMENT OF RENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , E. F. hired from the plaintiff for the term of                      years, the [house No.                     , Street], at the annual rent of                      rupees, payable [monthly].
2. The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.
3. The rent for the month of                      19   , amounting to rupees, has not been paid.  
[If, by the terms of the agreement, notice is required to be given to the surety, add:—]
4. On the                      day of                      19   , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.
5. The defendant has not paid the same.  
[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

(The First Schedule. Appendix A.—Pleadings.)

No. 13.

BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant entered into a agreement, and the original document is hereto annexed.

[Or, on the                      day of                      19   , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of                      for                      rupees.]

2. On the                      day of                      19   , the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], rendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 14.

NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the                      day of                      19   , and that the plaintiff should pay therefor                      rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 15.

WRONGFUL DISMISSAL.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services                      rupees [monthly].

*(The First Schedule. Appendix A.—Pleadings.)*

2. On the                      day of                      19   , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the                      day of                      19   , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 16.

## BREACH OF CONTRACT TO SERVE.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of                      rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the                      day of                      , offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards on the                      day of                      19   , he refused to serve the plaintiff as aforesaid.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 17.

## AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. *[Or state the tenor of the contract.]*

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 18

## ON A BOND FOR THE FIDELITY OF A CLERK.

*(Title.)*

A. B., the above-named, plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff took E. F. into his employment as a clerk.

*(The First Schedule. Appendix A.—Pleadings.)*

2. In consideration thereof, on the                      day of 19   , the defendant agreed with the plaintiff that if *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding        rupees.

[*Or*, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of rupees, subject to the condition that if *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[*Or*, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the                      day of                      19   , and the day of                      19   , *E. F.* received money and other property, amounting to the value of        rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 19.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the defendant, by a registered instrument, let to the plaintiff [the house No.       , Street] for the term of        years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the                      day of                      19   , during the said term, *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend        rupees in moving, and lost the custom of *G. H.*, and *I. J.*, by such removal.]

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 20.

ON AN AGREEMENT OF INDEMNITY.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the plaintiff and defendant, being partners in trade under the style of *A. B.* and *C. D.*,

*(The First Schedule. Appendix A.—Pleadings.)*

dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the                      day of                      19   , [a judgment was recovered against the plaintiff and defendant by *E. F.*, in the High Court of Judicature at                      , upon a debt due from the firm to *E. F.*, and on the                      day of                      19   ,] the plaintiff paid                      rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.  
[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

---

No. 21.

## PROCURING PROPERTY BY FRAUD.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth                      rupees over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of                      rupees.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods, were not delivered.*] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended                      rupees.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 22.

## FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , the defendant represented to the plaintiff that *E. F.* was solvent and in good credit, and worth                      rupees over all his liabilities [*or that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit*].

2. The plaintiff was thereby induced to sell to *E. F.* [rice] of the value of                      rupees [on                      months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*].

(*The First Schedule. Appendix A.—Pleadings.*)

4. *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called \_\_\_\_\_ and situate in \_\_\_\_\_ and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called \_\_\_\_\_, situated in \_\_\_\_\_.

2. Ever since the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[*As in paras. 4 and 5 of Form No. 1, and Relief Claimed.*]

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*(The First Schedule. Appendix A.—Pleadings.)*

No. 25.

## OBSTRUCTING A RIGHT OF WAY.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same].

4. *(State special damage, if any.)*

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

No. 26.

## OBSTRUCTING A HIGHWAY.

*(Title.)*

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from \_\_\_\_\_ to \_\_\_\_\_ so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or into the said trench*] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

No. 27.

## DIVERTING A WATER-COURSE.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the \_\_\_\_\_, in the village of \_\_\_\_\_, district of \_\_\_\_\_.

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than \_\_\_\_\_ sacks per day, whereas, before the said diversion of water, he was able to grind \_\_\_\_\_ sacks per day.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

*(The First Schedule. Appendix A.—Pleadings.)*

## No. 28.

## OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the                      day of                      19     , the defendant s prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

## No. 29.

## INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the                      day of                      19     , the defendant s were common carriers of passengers by railway between                      and                      .

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at                      [or near the station of                      or between the stations of                      and                      ], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance and is permanently disabled from carrying on his former business as [a salesman].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

. [Or thus :—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para. 3.]

## No. 30.

## INJURIES CAUSED IN NEGLIGENT DRIVING.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at                      The defendant is a merchant of                      .

2. On the                      day of                      19     , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about



*(The First Schedule. Appendix A.—Pleadings.)*

3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 31.

## FOR MALICIOUS PROSECUTION.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , the defendant obtained a warrant of arrest from                      [a Magistrate of the said city, *or as the case may be*] on a charge of                      , and the plaintiff was arrested thereon, and imprisoned for                      [days, *or* hours, and gave bail in the sum of                      rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the                      day of                      19     , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F. ; *or* in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 32.

## MOVEABLES WRONGFULLY DETAINED.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the

*(The First Schedule. Appendix A.—Pleadings.)*

schedule hereto annexed [*or describe the goods*], the estimated value of which is                      rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the day of                      19    , the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) delivery of the said goods, or                      rupees, in case delivery cannot be had ;
- (2)                      rupees compensation for the detention thereof.

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*The Schedule.*

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No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19    , the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth                      rupees over all his liabilities].

2. The plaintiff was hereby induced to sell and deliver to C. D. [one hundred boxes of tea], the estimated value of which is                      rupees.

3. The said representations were false, and were then known by C. D. to be so [*or at the time of making the said representations, C. D. was insolvent, and knew himself to be so*].

4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [*or who had notice of the falsity of the representation*].

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

- (1) delivery of the said goods, or                      rupees, in case delivery cannot be had ;
- (2)                      rupees compensation for the detention thereof.

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No. 34.

RÈSCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19    , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at                      , contained [ten bighas].

*(The First Schedule. Appendix A.—Pleadings.)*

2. The plaintiff was thereby induced to purchase the same at the price of            rupees in the belief that the said representation was true, and signed an agreement of which the original is hereto annexed. But the land has not been transferred to him.

3. On the            day of            19    , the plaintiff paid the defendant            rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five bighas].  
[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

(1)            rupees, with interest from the

                 day of            19    ;

(2) that the said agreement be delivered up and cancelled.

No. 35.

AN INJUNCTION RESTRAINING WASTE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed.*]

No. 36.

INJUNCTION RESTRAINING NUISANCE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No.            ,            Street, Calcutta].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street            ].

3. On the            day of            19    , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

(*The First Schedule. Appendix A.—Pleadings.*)

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

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No. 37.

PUBLIC NUISANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. The defendant has wrongly heaped up earth and stones on a public road known as                      Street at                      so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Advocate General [*or of the Collector or other officer appointed in this behalf*] to the institution of this suit.

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said road ;

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

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No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

[*As in Form No. 27.*]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

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No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter], and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].

*(The First Schedule. Appendix A.—Pleadings.)*

2. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he deposited the same for safe-keeping with the defendant.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

*[As in paras. 4 and 5 of Form No. 1.]*

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting] ;

(2) that he be compelled to deliver the same to the plaintiff.

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No. 40.

INTERPLEADER.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. Before the date of the claims hereinafter mentioned G. H. deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant C. D. claims the same [under an alleged assignment thereof to him from G. H.].

3. The defendant E. F. also claims the same [under an order of G. H. transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

*[As in paras. 4 and 5 of Form No. 1.]*

9. The plaintiff claims—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;

(2) that they be required to interplead together concerning their claims to the said property ;

[(3) that some person be authorised to receive the said property pending such litigation ;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

*(The First Schedule. Appendix A.—Pleadings)*

## No. 41.

## ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of \_\_\_\_\_, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of \_\_\_\_\_ [*here insert nature of debt and security, if any*].

2. E. F. died on or about the \_\_\_\_\_ day of \_\_\_\_\_. By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_ he appointed C. D. his executor [*or devised his estate in trust, etc., or died intestate, as the case may be*].

3. The will was proved by C. D. [*or letters of administration were granted, etc.*].

4. The defendant has possessed himself of the moveable [*and immoveable, or the proceeds of the immoveable*] property of E. F., and has not paid the plaintiff his debt.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that an account may be taken of the moveable [*and immoveable*] property of E. F., deceased, and that the same may be administered under the decree of the Court.

## No. 42.

## ADMINISTRATION BY SPECIFIC LEGATÈE.

*(Title.)*

[*Alter Form No. 41 thus*—

[*Omit paragraph 1 and commence paragraph 2*] E. F., late of \_\_\_\_\_, died on or about the \_\_\_\_\_ day of \_\_\_\_\_. By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_ he appointed C. D. his executor, and bequeathed to the plaintiff [*here state the specific legacy*].

*For paragraph 4 substitute—*

The defendant is in possession of the moveable property of E. F., and, amongst other things, of the said [*here name the subject of the specific bequest*].

*For the commencement of paragraph 7 substitute—*

The plaintiff claims that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, etc.

## No. 43.

## ADMINISTRATION BY PECUNIARY LEGATEE.

*(Title.)*

[*Alter Form No. 41 thus*—

[*Omit paragraph 1 and substitute for paragraph 2*] E. F., late of \_\_\_\_\_, died on or about the \_\_\_\_\_ day of \_\_\_\_\_.

By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_ he appointed \_\_\_\_\_.

*(The First Schedule. Appendix A.—Pleadings.)*

*C. D.* his executor, and bequeathed to the plaintiff a legacy of rupees.

*In paragraph 4 substitute "legacy" for "debt".*

*Another form.*

*(Title.)*

*E. F.*, the above-named plaintiff, states as follows:—

1. *A. B.* of *K.* in the \_\_\_\_\_ died on the \_\_\_\_\_ day of \_\_\_\_\_ . By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_ , he appointed the defendant and *M. N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life ; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the \_\_\_\_\_ day of \_\_\_\_\_ . The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property ; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property ; he has sold some part of the immoveable property.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims—

- (1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken ;
- (2) such further or other relief as the nature of the case may require.

No. 44.

EXECUTION OF TRUSTS.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the \_\_\_\_\_ day of \_\_\_\_\_ made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and the other creditors of *E. F.*].

2. *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. *C. D.* claims to be entitled to a beneficial interest under the instrument.

*[As in paras. 4 and 5 of Form No. 1.]*

*(The First Schedule. Appendix A.—Pleadings.)*

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale of, *or* of part of, the said moveable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust] ; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C. D.* and such other persons so interested as the Court may direct, or that *C. D.* may show good cause to the contrary.

[*N.B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.*]

## No. 45.

## FORECLOSURE OR SALE.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :—

- (a) (date) ;
- (b) (names of mortgagor and mortgagee) ;
- (c) (sum secured) ;
- (d) (rate of interest) ;
- (e) (property subject to mortgage) ;
- (f) (amount now due) ;
- (g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the plaintiff is mortgagee in possession, add)

3. The plaintiff took possession of the mortgaged property on the day of \_\_\_\_\_ and is ready to account as mortgagee in possession from that time.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) payment, or in default [sale *or*] foreclosure [and possession]

[*Where Order 34, rule 6, applies.*]

- (2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

## No. 46.

## REDEMPTION.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.



*(The First Schedule. Appendix A.—Pleadings.)*

2. The following are the particulars of the mortgage :—

- (a) (date) ;
- (b) (names of mortgagor and mortgagee) ;
- (c) (sum secured) ;
- (d) (rate of interest) ;
- (e) (property subject to mortgage) ;
- (f) *(if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).*

*(If the plaintiff is mortgagee in possession, add)*

3. The defendant has taken possession [*or has received the rents*] of the mortgaged property.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [*and to have possession thereof*].

No. 47.

SPECIFIC PERFORMANCE (No. 1).

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ and signed by the defendant, he contracted to buy of [*or sell to*] the plaintiff certain immoveable property therein described and referred to, for the sum of \_\_\_\_\_ rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or to accept a transfer and possession of the said property*] and to pay the costs of the suit.

No. 48.

SPECIFIC PERFORMANCE (No. 2).

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable property described in the agreement.

*(The First Schedule. Appendix A.—Pleadings.)*

2. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff tendered \_\_\_\_\_ rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff again demanded such transfer. [*Or* the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[*As in paras. 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by \_\_\_\_\_ a sufficient instrument [*following the terms of the agreement*];

(2) \_\_\_\_\_ rupees compensation for withholding the same.

No. 49.

## PARTNERSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. He and C. D., the defendant, have been for \_\_\_\_\_ years [*or months*] past carrying on business together under articles of partnership in writing [*or under a deed, or under a verbal agreement*].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [*Or* the defendant has committed the following breaches of the partnership articles :—

(1)

(2)

(3) \_\_\_\_\_ ]

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) dissolution of the partnership ;

(2) that accounts be taken ;

(3) that a receiver be appointed.

(*N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution ; and instead insert a paragraph stating the facts of the partnership having been dissolved.*)

## (4) WRITTEN STATEMENTS.

*General defences.*

The defendant denies that (*set out facts*).

The defendant does not admit that (*set out facts*).

Denial

The defendant admits that \_\_\_\_\_ but says that \_\_\_\_\_ .  
The defendant denies that he is a partner in the defendant firm of \_\_\_\_\_ Protest.

<sup>1</sup> See now the Indian Limitation Act, 1908 (9 of 1908).

## (The First Schedule. Appendix A.—Pleadings.)

[or]

4.	}	Except as to Rs.	,	same as	{	1.
5.						2.
6.						3.

7. The defendant [or A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C. D., the plaintiff's agent] on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

8. The defendant satisfied the claim by payment after suit to the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

## No. 2.

## DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

## No. 3.

## DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

## No. 4.

## DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—

						Rs.
1907, January, 25th	...	...	...	...	...	150
„ February, 1st	...	...	...	...	...	50
				Total	...	200

2. As to the whole [or as to Rs. \_\_\_\_\_, part of the money claimed] the defendant made tender before suit of Rs. \_\_\_\_\_ and has paid the same into Court.

## No. 5.

## DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to \_\_\_\_\_ of \_\_\_\_\_ Street, Calcutta, livery stable keepers employed by the defendant

*(The First Schedule. Appendix A.—Pleadings.)*

to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said .

2. The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

---

No. 6.

DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [*or matters*] complained of.

---

No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.  
 2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows :—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta :—

45 maunds at Rs. 2 per maund . . . . . Rs. 90.

---

No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [*assignee, etc.*].  
 2. The book was not registered.  
 3. The defendant did not infringe.

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No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.  
 2. The alleged trade mark is not a trade mark.  
 3. The defendant did not infringe.

---

No. 10.

DEFENCE IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].  
 2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

*(The First Schedule. Appendix A.—Pleadings.)*

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

*[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.]*

4. The plaintiff has been guilty of laches of which the following are particulars :—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. *[If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]*

## No. 11.

## DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (*if more than one transfer is alleged, say which is denied*).

3. The suit is barred by article \_\_\_\_\_ of the second schedule to the <sup>1</sup>Indian Limitation Act, 1877.

XV of 1877.

4. The following payments have been made, viz. :—

(Insert date)_____	...	...	...	...	Rs.
(Insert date)_____	...	...	...	...	1,000
					500

5. The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_ and has received the rents ever since.

6. That plaintiff released the debt on the \_\_\_\_\_ of \_\_\_\_\_

7. The defendant transferred all his interest to A. B. by a document dated \_\_\_\_\_

## No. 12.

## DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article \_\_\_\_\_ of the second schedule to the <sup>1</sup>Indian Limitation Act, 1877.

XV of 1877.

2. The plaintiff transferred all interest in the property to A. B.

3. The defendant, by a document dated the \_\_\_\_\_ day of \_\_\_\_\_ transferred all his interest in the mortgage-debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

*(If the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits.)*

<sup>1</sup> See now the Indian Limitation Act, 1908 (9 of 1908).

*(The First Schedule Appendix A.—Pleadings.)*

## No. 13.

## DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.
  2. A. B. was not the agent of the defendant (*if alleged by plaintiff*).
  3. The plaintiff has not performed the following conditions—*(Conditions)*.
  4. The defendant did not—(*alleged acts of part performance*).
  5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(*State why*).
  6. The agreement is uncertain in the following respects—(*State them*)
  7. (*or*) The plaintiff has been guilty of delay.
  8. (*or*) The plaintiff has been guilty of fraud (*or* misrepresentation).
  9. (*or*) The agreement is unfair.
  10. (*or*) The agreement was entered into by mistake.
  11. The following are particulars of (7), (8), (9), (10) (*or as the case may be*).
  12. The agreement was rescinded under Conditions of Sale, No 11 (*or by mutual agreement*).
- (In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)*

## No. 14.

## DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. A. B.'s will contained a charge of debts ; he died insolvent ; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs. , and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs. .
2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.
3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.
4. The defendant submits that the plaintiff ought to pay the costs of this suit,

(The First Schedule. Appendix A.—Pleadings. Appendix B.—Process.)

No. 15.

PROBATE OF WILL IN SOLEMN FORM.

X of 1865  
XXI of 1870.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865<sup>1</sup> [or of the Hindu Wills Act, 1870<sup>1</sup>].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [state the nature of the fraud].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [or of the contents of the residuary clause in the said will, as the case may be].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff ;

(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

No. 16.

PARTICULARS. (O. 6, r. 5.)

(Title of suit.)

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the of  
(*Here set out the particulars ordered in paragraphs if necessary.*)

APPENDIX B.

PROCESS.

No. 1.

SUMMONS FOR DISPOSAL OF SUIT. (O. 5, IT. 1, 5.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS

has instituted a suit against you for  
you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit,

<sup>1</sup> See now the Indian Succession Act, 1925 (39 of 1925).



*(The First Schedule. Appendix B.—Process.)*

or who shall be accompanied by some person able to answer all such questions, on the                      day of                      19                      , at o'clock in the                      noon, to answer the claim ; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this                      day of                      19                      .                      ...

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

---

No. 2.

SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, II. 1, 5.)

*(Title.)*

To

*[Name, description and place of residence.]*

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the                      day of                      19                      , at o'clock in the                      noon, to answer the claim ; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this                      day of                      19                      .

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses,

(*The First Schedule. Appendix B.—Process.*)

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

---

No. 3.

SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)  
(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for  
you are hereby summoned to appear in this Court in person on the  
day of 19 , at o'clock in the  
noon, to answer the claim ; and you are directed to produce on that day  
all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before  
mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day  
of 19 .

*Judge.*

---

No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT. (O. 37, r. 2.)  
(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS has instituted a suit against you  
under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. ,  
balance of principal and interest due to him as the of a  
of which a copy is hereto annexed, you are hereby summoned to obtain leave  
from the Court within ten days from the service hereof to appear and defend  
the suit, and within such time to cause an appearance to be entered for you.  
In default whereof the plaintiff will be entitled at any time after the expira-  
tion of such ten days to obtain a decree for any sum not exceeding the sum  
of Rs. and the sum of Rs. for costs <sup>1</sup>[to-  
gether with such interest, if any, from the date of the institution of the  
suit as the Court may order].

Leave to appear may be obtained on an application to the Court sup-  
ported by affidavit or declaration showing that there is a defence to the suit  
on the merits, or that it is reasonable that you should be allowed to appear  
in the suit.

GIVEN under my hand and the seal of the Court, this day  
of 19 .

*Judge.*

---

<sup>1</sup> Ins. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), s. 4.

*(The First Schedule. Appendix B.—Process.)*

## No. 5.

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF. (O. I, r. 10.)

*(Title.)*

To

*[Name, description and place of residence.]*

WHEREAS \_\_\_\_\_ has instituted the above suit against \_\_\_\_\_ for \_\_\_\_\_ and, whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved :

Take notice that you should on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

## No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT. (O 22, r. 4.)

*(Title.)*

To

WHEREAS the plaintiff \_\_\_\_\_ instituted a suit in this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ against the defendant \_\_\_\_\_ who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said deceased, and desiring that you be made the defendant in his stead :

You are hereby summoned to attend in this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ A.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

## No. 7.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT. (O. 5, r. 21.)

*(Title.)*

WHEREAS it is stated that

defendant in the above suit is at present residing in  
witness

It is ordered that a summons returnable on the \_\_\_\_\_ day of \_\_\_\_\_

*(The First Schedule. Appendix B.—Process.)*

19 , be forwarded to the Court of  
for service on the said Defendant  
Witness with a duplicate of this proceeding.

The court-fee of chargeable in respect to the summons  
has been realized in this Court in stamps.

Dated

19 .

*Judge.*

---

No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER.

(O. 5, r. 25.)

(Title.)

To

The Superintendent of the Jail at

UNDER the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

---

No. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER. (O. 5, IT. 27, 28.)

(Title.)

To

UNDER the provisions of Order V, rule 27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

---

No. 10.

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT. (O. 5, r. 23.)

(Title.)

Read proceeding from the

forwarding

in Suit No. for service on  
of 19 of that Court.

Read Serving Officer's endorsement stating that the  
and proof of the above having been duly taken by me on the oath of

## (The First Schedule. Appendix B.—Process.)

and it is ordered that the be  
 returned to the with a copy of this  
 proceeding.

*Judge.*

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

## No. II.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR  
NOTICE. (O. 5, r. 18.)

(Title.)

The Affidavit of , son of  
 I make oath  
affirm

and say as follows:—

(1) I am a process-server of this Court.

(2) On the day of 19 , I received a

summons  
notice issued by the Court of

in Suit No. of 19 , in the said Court, dated the  
 day of 19 , for service on

(3) The said was at the  
 time personally known to me, and I served the said summons  
notice on him  
her on  
 the day of 19 , at about  
 o'clock in the noon at by tendering a copy  
 thereof to him  
her and requiring his  
her signature to the original summons  
notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process,  
 and in whose presence.

(b) Signature of process-server.

or,

(3) The said not being personally known to me  
 accompanied me to  
 and pointed out to me a person whom he stated to be  
 the said , and I  
 served the said summons  
notice on him  
her on the day of  
 19 , at about o'clock in the noon  
 at by tendering a copy thereof to her  
him and requiring  
his  
her signature to the original summons  
notice

*(The First Schedule. Appendix B.—Process.)*

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server

or,

(3) The said \_\_\_\_\_ and the house in which he ordinarily resides being personally known to me, I went to the said house, in and there on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at about o'clock in the \_\_\_\_\_ noon, I did not find the said

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One \_\_\_\_\_ accompanied me to \_\_\_\_\_ which he said was the house and there pointed out to me \_\_\_\_\_ in which \_\_\_\_\_ ordinarily resides. I did not find the said there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

*If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.*

Sworn  
Affirmed by the said \_\_\_\_\_

before me this

day of \_\_\_\_\_ 19\_\_\_\_.

*Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents.*

No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been

*(The First Schedule. Appendix B.—Process.)*

proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons ;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the                      day of                      19   is now fixed for the hearing of the same ; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this                      day of                      19   .

*Judge.*

---

No. 13.

SUMMONS TO WITNESS. (O. 16, rr. 1, 5.)  
(*Title.*)

To

WHEREAS your attendance is required to  
on behalf of the                      in the above suit, you  
are hereby required [personally] to appear before this Court on the  
day of                      19 , at                      o'clock in the fore-  
noon, and to bring with you [*or to send to this*                      Court].

A sum of Rs.                      , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this                      day of                      19   .

*Judge.*

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs.                      will be tendered to you for each day's attendance beyond the day specified.

---

No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)  
(*Title.*)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law : and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons : This proclamation is, therefore, under

*(The First Schedule. Appendix B.—Process.)*

rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

---

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)  
(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is, therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

---

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS. (O. 16, r. 10.)  
(Title.)

To

The Bailiff of the Court.

WHEREAS the witness cited by \_\_\_\_\_ has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment \_\_\_\_\_ property belonging to the said witness to the value of \_\_\_\_\_ and to submit a return, accompanied with an inventory thereof, within \_\_\_\_\_ days.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*





(The First Schedule. Appendix B.—Process. Appendix C.—Discovery, Inspection and Admission.)

cannot give such evidence (or produce such document) ; and whereas the Court has called upon the said \_\_\_\_\_ to give security for his appearance on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ which he has failed to do ; This is to require you to receive the said \_\_\_\_\_ into your custody in the civil prison and to produce him before this Court at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19 .

*Judge.*

## APPENDIX C.

DISCOVERY, INSPECTION AND ADMISSION.

No. 1.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. II, r. I.)

In the Court of  
Civil Suit No.                      of                      19 .  
*A. B.*                      ...                      ...                      ... *Plaintiff,*  
  *against*

*C. D., E. F. and G. H.* ... .. *Defendants.*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
\_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_; It is ordered that the \_\_\_\_\_ be at liberty to deliver to the  
\_\_\_\_\_ interrogatories in writing, and that the said  
do answer the interrogatories as prescribed by Order XI, rule 8, and that  
the costs of this application be \_\_\_\_\_

No. 2.

INTERROGATORIES. (O. II, r. 4.)

(Title as in No. I, *supra*.)

Interrogatories on behalf of the above-named [plaintiff or defendant C. D.] for the examination of the above-named [defendants E. F. and G. H. or plaintiff].

1. Did not, etc.  
2. Has not, etc.  
etc., etc., etc.

[The defendant E. F. is required to answer the interrogatories numbered .]

[The defendant G. H. is required to answer the interrogatories numbered

(The First Schedule. Appendix C.—Discovery, Inspection and Admission.)

No. 3.

ANSWER TO INTERROGATORIES. (O. II, r. 9.)

(Title as in No. 1, *supra*.)

The answer of the above-named defendant *E. F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows:—

1. } Enter answers to interrogatories in paragraphs numbered con-
  2. } secutively.
  3. I object to answer the interrogatories numbered
- on the ground that [*state grounds of objection*].

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. II, r. 12.)

(Title as in No. 1, *supra*.)

Upon hearing

It is ordered that the \_\_\_\_\_ do within \_\_\_\_\_ days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be

No. 5.

AFFIDAVIT AS TO DOCUMENTS. (O. II, r. 13.)

(Title as in No. 1, *supra*.)

I, the above-named defendant *C. D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*].

3. I have had but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any

(*The First Schedule. Appendix C.—Discovery, Inspection and Admission.*)

copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. II, r. 14.)

(*Title as in No. 1, supra.*)

Upon hearing of \_\_\_\_\_ and upon reading the affidavit filed the \_\_\_\_\_ day of \_\_\_\_\_ 19 ; It is ordered that the \_\_\_\_\_ do, at all reasonable times, on reasonable notice, produce at \_\_\_\_\_, situate at \_\_\_\_\_, the following documents, namely, \_\_\_\_\_, and that the \_\_\_\_\_ be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime, it is ordered that all further proceedings be stayed and that the costs of this application be \_\_\_\_\_

---

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. II, r. 16.)

(*Title as in No. 1, supra.*)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*plaint or written statement or affidavit*], dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 ].

[*Describe documents required.*]

*X. Y., Pleader for the*

To Z., Pleader for the

---

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. II, r. 17.)

(*Title as in No. 1, supra.*)

Take notice that you can inspect the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ 19 [*except the documents numbered \_\_\_\_\_ in that notice*] at [*insert place of inspection*] on Thursday next, the \_\_\_\_\_ instant, between the hours of 12 and 4 o'clock.

*Or*, that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_ 19 , on the ground that [*state the ground*]:—

---

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [*or defendant*] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the

(*The First Schedule. Appendix C.—Discovery, Inspection and Admission.*)

same may be inspected by the defendant [*or plaintiff*], his pleader or agent, at \_\_\_\_\_ on \_\_\_\_\_ between the hours of \_\_\_\_\_; and the defendant [*or plaintiff*], is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., pleader [*or agent*] for plaintiff  
[*or defendant*].

To E. F., pleader [*or agent*] for defendant [*or plaintiff*].

[*Here describe the documents and specify as to each document whether it is original or a copy.*]

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5.)

(*Title as in No. 1. supra.*)

Take notice that the plaintiff [*or defendant*] in this suit requires the defendant [*or plaintiff*] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., pleader [*or agent*] for plaintiff [*or defendant*].

To E. F., pleader [*or agent*] for defendant [*or plaintiff*].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

No. 11.

ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 12, r. 5.)

(*Title as in No. 1. supra.*)

The defendant [*or plaintiff*] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or plaintiff*] on

(*The First Schedule. Appendix C.—Discovery, Inspection and Admission.  
Appendix D.—Decrees.*)

any other occasion or by any one other than the plaintiff [or defendant, or party requiring the admission].

E. F., *pleader* [or *agent*] for defendant  
[or *plaintiff*].

To G. H., *pleader* [or *agent*] for plaintiff [or defendant].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1890	1.
2. That he died intestate . . .	2
3. That N. was his lawful son . . .	3 But not that he was his only lawful son.
4. That O. died . . . . .	4 But not that he died on the 1st April, 1896.
5. That O was never married . . .	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(*Title as in No. 1, supra.*)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G. H., *pleader* [or *agent*] for plaintiff [or defendant].

To E. F., *pleader* [or *agent*] for defendant [or plaintiff].

## APPENDIX D. DECREES.

No. 1.

DECREE IN ORIGINAL SUIT. (O. 20, rr. 6, 7.)

(*Title.*)

Claim for

THIS suit coming on this day for final disposal before

in the presence of

for the plaintiff and

of

for the defendant, it is ordered

and decreed that



*(The First Schedule. Appendix D.—Decrees.)**Costs of Suit.*

Plaintiff.				Defendant			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint ..				Stamp for power ...			
2. Do. for power				Do for petition ...			
3. Do. for exhibits ..				Pleader's fee ...			
4. Pleader's fee on Rs. ...				Subsistence for witnesses			
5. Subsistence for witnesses				Service of process ..			
6. Commissioner's fee ..				Commissioner's fee ..			
7. Service of process							
Total				Total			

<sup>1</sup>[No. 3.]

## PRÉLIMINARY DECREE FOR FORECLOSURE.

(Order XXXIV, rule 2.—Where accounts are directed to be taken.)

*(Title.)*

This suit coming on this \_\_\_\_\_ day, etc. ; It is hereby ordered  
and decreed that it be referred to \_\_\_\_\_ as the  
Commissioner to take the accounts following:—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable) ;
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received ;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

<sup>1</sup> Forms 3 to 11 were subs. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 8 and Sch., for the original forms.



*(The First Schedule. Appendix D.—Decrees.)*

- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the \_\_\_\_\_ day of \_\_\_\_\_ and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_, or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs. \_\_\_\_\_ for the costs of the suit awarded to the plaintiff ;

- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarréd and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver

*(The First Schedule. Appendix D.—Decrees.)*

up to the plaintiff quiet and peaceable possession of the said property ; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

No. 3A.

## PRELIMINARY DECREE FOR FORECLOSURE.

(Order XXXIV, rule 2.—Where the Court declares the amount due.)

*(Title.)*

This suit coming on this \_\_\_\_\_ day, etc. ; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this \_\_\_\_\_ day of \_\_\_\_\_ is the sum of Rs. \_\_\_\_\_ for principal, the sum of Rs. \_\_\_\_\_ for interest on the said principal, the sum of Rs. \_\_\_\_\_ for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs. \_\_\_\_\_ for the costs of this suit awarded to the plaintiff, making in all the sum of Rs. \_\_\_\_\_.

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ or any later date up to which time for payment may be extended by the Court of the said sum of Rs. \_\_\_\_\_ ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed

*(The First Schedule. Appendix D.—Decrees.)*

of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property ; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

## No. 4.

## FINAL DECREE FOR FORECLOSURE.

(Order XXXIV, rule 3.)

*(Title.)*

Upon reading the preliminary decree passed in this suit on the  
 day of \_\_\_\_\_ and further orders (if any) dated the  
 day of \_\_\_\_\_ and the application of the plaintiff dated the  
 day of \_\_\_\_\_ for a final decree and after hearing the  
 parties and it appearing that the payment directed by the said decree and  
 orders has not been made by the defendant or any person on his behalf or  
 any other person entitled to redeem the said mortgage:

It is hereby ordered and decreed that the defendant and all persons  
 claiming through or under him be and they are hereby absolutely debarred  
 and foreclosed of and from all right of redemption of and in the property  
 in the aforesaid preliminary decree mentioned;\*[and (if the defendant be  
*in possession of the said mortgage property*) that the defendant shall deliver  
 to the plaintiff quiet and peaceable possession of the said mortgaged pro-  
 perty].

2. And it is hereby further declared that the whole of the liability  
 whatsoever of the defendant up to this day arising from the said mortgage  
 mentioned in the plaint or from this suit is hereby discharged and ex-  
 tinguished.

## No. 5.

## PRELIMINARY DECREE FOR SALE.

(Order XXXIV, rule 4.—Where accounts are directed to be taken.)

*(Title.)*

This suit coming on this \_\_\_\_\_ day, etc. ; It is hereby ordered and  
 decreed that it be referred to \_\_\_\_\_ as the  
 Commissioner to take the accounts following:—

- (i) an account of what is due on this date to the plaintiff for principal  
 and interest on his mortgage mentioned in the plaint (such  
 interest to be computed at the rate payable on the principal  
 or where no such rate is fixed, at six per cent. per annum or at  
 such rate as the Court deems reasonable) ;

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\* Words not required to be deleted.

*(The First Schedule. Appendix D.—Decrees.)*

- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received ;
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the \_\_\_\_\_ day of \_\_\_\_\_, and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. \_\_\_\_\_ for the costs of the suit awarded to the plaintiff ;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer

*(The First Schedule. Appendix D.—Decrees.)*

the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

## No. 5A.

## PRELIMINARY DECREE FOR SALE.

(Order XXXIV, rule 4.—When the Court declares the amount due.)  
(Title.)

This suit coming on this                      day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this                      day of                      is the sum of Rs. for principal, the sum of Rs.                      for interest on the said principal, the sum of Rs.                      for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs.                      for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.

*(The First Schedule. Appendix D.—Decrees.)*

2. And it is hereby ordered and decreed as follows:—

- (i) that the defendant do pay into Court on or before the day of                      or any later date up to which time for payment may be extended by the Court, the said sum of Rs.                      ;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property ; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold ; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

*(The First Schedule. Appendix D.—Decrees.)*

## No. 6.

## FINAL DECREE FOR SALE.

(Order XXXIV, rule 5.)

*(Title.)*

Upon reading the preliminary decree passed in this suit on the  
 day of \_\_\_\_\_ and further orders (if any) dated the  
 day of \_\_\_\_\_ and the application of the plaintiff dated the  
 \_\_\_\_\_ day of \_\_\_\_\_ for a final decree and after hearing the  
 parties and it appearing that the payment directed by the said decree and  
 orders has not been made by the defendant or any person on his behalf  
 or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the  
 aforesaid preliminary decree mentioned or a sufficient part thereof be sold,  
 and that for the purposes of such sale the plaintiff shall produce before the  
 Court or such officer as it appoints all documents in his possession or power  
 relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money  
 realised by such sale shall be paid into the Court and shall be duly applied  
 (after deduction therefrom of the expenses of the sale) in payment of the  
 amount payable to the plaintiff under the aforesaid preliminary decree and  
 under any further orders that may have been passed in this suit and in  
 payment of any amount which the Court may have adjudged due to the  
 plaintiff for such costs of the suit including the costs of this application and  
 such costs, charges and expenses as may be payable under rule 10,  
 together with such subsequent interest as may be payable under rule 11,  
 of Order XXXIV of the First Schedule to the Code of Civil Procedure,  
 1908, and that the balance, if any, shall be paid to the defendant or  
 other persons entitled to receive the same.

## No. 7.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY  
 MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED.

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

*(Title.)*

This suit coming on this \_\_\_\_\_ day, etc. ; It is hereby ordered and  
 decreed that it be referred to \_\_\_\_\_ as the Commissioner to take the  
 accounts following:—

- (i) an account of what is due on this date to the defendant for  
 principal and interest on the mortgage mentioned in the plaint  
 (such interest to be computed at the rate payable on the prin-  
 cipal or where no such rate is fixed, at six per cent. per annum  
 or at such rate as the Court deems reasonable) ;
- (ii) an account of the income of the mortgaged property received up  
 to this date by the defendant or by any other person by order  
 or for the use of the defendant or which without the wilful  
 default of the defendant or such person might have been so  
 received ;

*(The First Schedule. Appendix D.—Decreets.)*

- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the                      day of                      , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

- (i) that the plaintiff do pay into Court on or before the                      day of                      , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.                      for the costs of the suit awarded to the defendant ;
- (ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person





(*The First Schedule. Appendix D.—Decrees.*)

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the                      day of                      , and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the                      day of                      or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.                      for the costs of the suit awarded to the defendant;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in his suit and in payment of any amount which the

*(The First Schedule. Appendix D.—Decrees.)*

Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance ; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

## No. 7B.

PRÉLIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORÈCLOSURE IS PASSED.

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

*(Title.)*

This suit coming on this                      day, etc. ; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this                      day of                      is the sum of Rs. for principal, the sum of Rs.                      for interest on the said principal, the sum of Rs.                      for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs.                      for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows :—

- (i) that the plaintiff do pay into Court on or before the                      day of                      or any later date up to which time for payment may be extended by the Court the said sum of Rs.                      ;
- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and

(The First Schedule. Appendix D.—Decrees.)

clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property ; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

### SCHEDULE.

*Description of the mortgaged property.*

No. 7C.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(Title.)

This suit coming on this \_\_\_\_\_ day, etc. ; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this \_\_\_\_\_ day of \_\_\_\_\_ is the sum of Rs \_\_\_\_\_ for principal, the sum of Rs. \_\_\_\_\_ for interest on the said principal, the sum of Rs. \_\_\_\_\_ for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. \_\_\_\_\_ for the cost of this suit awarded to the defendant, making in all the sum of Rs. \_\_\_\_\_.

2. And it is hereby ordered and decreed as follows :—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs. :

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, reconvey or re-transfer the said property to the plaintiff free



*(The First Schedule. Appendix D.—Decrees.)*

and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned\*[and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

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No. 7E.

FINAL DECREE FOR SALE IN A RÈDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR.

(Order XXXIV, rule 8.)

*(Title.)*

Upon reading the preliminary decree passed in this suit on the day of \_\_\_\_\_ and further orders (if any) dated the day of \_\_\_\_\_, and the application of the defendant dated the day of \_\_\_\_\_ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

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No. 7F.

FINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR RÈDEMPTION WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE.

(Order XXXIV, rules 3, 5 and 8.)

*(Title.)*

This suit coming on this \_\_\_\_\_ day for further consideration and it appearing that on the \_\_\_\_\_ day of \_\_\_\_\_ the mortgagor

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\* Words not required to be deleted.

*(The First Schedule. Appendix D.—Decrees.)*

or \_\_\_\_\_, the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the \_\_\_\_\_ day of \_\_\_\_\_; It is hereby ordered and decreed that:—

- (i) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor \*[or, as the case may be, \_\_\_\_\_ who has redeemed the property] or an acknowledgment of the payment of the amount due in his favour;
  - (ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.
- And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of re-conveyance or acknowledgment in the manner aforesaid,—
- (i) the said sum of Rs. \_\_\_\_\_ be paid out of Court to the mortgagee;
  - (ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor '[or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor \*[or other person making the payment], the said deed of re-conveyance or the acknowledgment in the office of the Sub-Registrar of \_\_\_\_\_; and
  - (iii) \*[if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor \*[or such person as aforesaid who has made the payment].

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No. 8.

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF  
THE MORTGAGED PROPERTY.

(Order XXXIV, rules 6 and 8A.)

(Title.)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the \_\_\_\_\_ day of \_\_\_\_\_ and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. \_\_\_\_\_ and have been paid to the applicant out of the Court on the \_\_\_\_\_ day of \_\_\_\_\_ and that the balance now due to him under the aforesaid decree is Rs. \_\_\_\_\_;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

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\* Words not required to be deleted.

(The First Schedule. Appendix D.—Decrees.)

It is hereby ordered and decreed as follows:—

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. \_\_\_\_\_ with further interest at the rate of six per cent. per annum from the \_\_\_\_\_ day of \_\_\_\_\_ (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

## No. 9.

PRELIMINARY DECREE FOR FORECLOSURE OR SALE.

[Plaintiff . . . . . 1st Mortgagee,  
vs.

Defendant No. 1	.	.	.	.	.	.	Mortgagor.
Defendant No. 2	.	.	.	.	.	.	2nd Mortgagee.]

(Order XXXIV, rules 2 and 4.)

**(Title.)**

The suit coming on this \_\_\_\_\_ day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this \_\_\_\_\_ day of \_\_\_\_\_ is the sum of Rs. \_\_\_\_\_ for principal, the sum of Rs. \_\_\_\_\_ for interest on the said principal, the sum of Rs. \_\_\_\_\_ for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs. \_\_\_\_\_ for the costs of this suit awarded to the plaintiff, making in all the sum of Rs. \_\_\_\_\_.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2\*[or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—]

3. And it is hereby ordered and decreed as follows:—

(i) (a) that defendants or one of them do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ or any later date up to which time for payment has been extended by the Court the said sum of Rs. \_\_\_\_\_ due to the plaintiff: and

(b) that defendant No. 1 do pay into Court on or before the day of \_\_\_\_\_ or any later date up to which time for payment has been extended by the Court the said sum of Rs. \_\_\_\_\_ due to defendant No. 2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in

\* Words not required to be deleted.



*(The First Schedule. Appendix D.—Decrees.)*

clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

- (i) \**[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or
- (ii) \**[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and
- (iii) \**[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest

*(The First Schedule. Appendix D.—Decrees.)*

as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

\*[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] or

\*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed \**[in the case where a sale is ordered under clause 5 above]*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this

*(The First Schedule. Appendix D.—Decrees.)*

decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

- (ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE.

*Description of the mortgaged property.*

## No. 10.

## PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE.

[Plaintiff . . . . . 2nd Mortgagee,

vs.

Defendant No. 1 . . . . . Mortgagee,

Defendant No. 2 . . . . . 1st Mortgagee.]

(Order XXXIV, rules 2, 4 and 7.)

*(Title.)*

The suit coming on this . . . day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this . . . day of . . . is the sum of Rs. . . . for principal, the sum of Rs. . . . for interest on the said principal, the sum of Rs. . . . for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. . . . for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs. . . .

*(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)*

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff\* [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—]

\* Words not required to be deleted.

*(The First Schedule. Appendix D.—Decrees.)*

3. And it is hereby ordered and decreed as follows :—

- (i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ or any later date up to which time for payment has been extended by the Court the said sum of Rs. \_\_\_\_\_ due to defendant No. 2 ; and
- (b) that defendant No. 1 do pay into Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ or any later date up to which time for payment has been extended by the Court the said sum of Rs. \_\_\_\_\_ due to the plaintiff ; and
- (ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10; together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

- (i) \**[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the property; or

(*The First Schedule. Appendix D.—Decrees.*)

- (ii) \**[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and
  - (iii) \**[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and
  - (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.
5. And it is hereby further ordered and decreed,—
- (a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the defendant No. 2 might have done under clause 4 above*)—
  - \*[(*§*)] that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property;] or
  - \*[(*ii*)] that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]



*(The First Schedule. Appendix D.—Decrees.)*

day of                      is the sum of Rs.                      for principal, the sum of Rs.  
 for interest on the said principal, the sum of Rs.  
 for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs.  
 for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

*(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.)*

2. And it is hereby ordered and decreed as follows:—

- (i) that defendant No. 1 do pay into Court on or before the said day of                      or any later date up to which time for payment may be extended by the Court the said sum of Rs.                      due to defendant No. 2.

*(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)*

- (ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and
- (iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interests as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is

*(The First Schedule. Appendix D.—Decrees )*

not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—*(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder)*.

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

## SCHEDULE

*[Description of the mortgaged property.]*

## No. 12.

## DECREE FOR RECTIFICATION OF INSTRUMENT.

*(Title.)*

It is hereby declared that the \_\_\_\_\_, dated the \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_, does not truly express the intention of the parties



*(The First Schedule. Appendix D.—Decrees.)*

to such

And it is decreed that the said

be rectified by

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No. 13.

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

*(Title.)*

IT is hereby declared that the \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and made between \_\_\_\_\_ and \_\_\_\_\_, is void as against the plaintiff and all other the creditors, if any, of the defendant

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No. 14.

INJUNCTION AGAINST PRIVATE NUISANCE.

*(Title.)*

LET the defendant \_\_\_\_\_, his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

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No. 15.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

*(Title.)*

LET the defendant \_\_\_\_\_, his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in \_\_\_\_\_ any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

---

No. 16.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

*(Title.)*

LET the defendant \_\_\_\_\_, his agents, servants and workmen, be perpetually restrained from using or permitting to be used and part of the lane at \_\_\_\_\_, the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose

(The First Schedule. Appendix D.—Decrees.)

No. 17.

### PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

(Title.)

It is ordered that the following accounts and inquiries be taken and made ; that is to say :—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. That an account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of                  next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the \_\_\_\_\_ \*shall find it necessary for carrying  
out the objects of the suit to sell any part of the moveable property of the  
deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the \* (and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

\* Here insert name of proper officer.

*(The First Schedule. Appendix D.—Decrees.)*

- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof ;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the \_\_\_\_\_ \*and that in case any doubt 'or' difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the \_\_\_\_\_ \*shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the \_\_\_\_\_ \*to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the \_\_\_\_\_ day of \_\_\_\_\_, and that the \_\_\_\_\_ \*do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the \_\_\_\_\_ day of \_\_\_\_\_.

15. And, lastly, it is ordered that this suit [*or* proceeding] stand adjourned for making final decree to the \_\_\_\_\_ day of \_\_\_\_\_.  
[Such part only of this decree is to be used as is applicable to the particular case.]

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No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

*(Title.)*

1. It is ordered that the defendant \_\_\_\_\_ do, on or before the \_\_\_\_\_ day of \_\_\_\_\_, pay into Court the sum of Rs. \_\_\_\_\_, the balance by the said certificate found to be due from the said defendant on account of the estate of \_\_\_\_\_, the testator, and also the sum of Rs. \_\_\_\_\_ for interest, at the rate of Rs. \_\_\_\_\_ per cent. per annum, from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_, amounting together to the sum of Rs. \_\_\_\_\_.

2. Let the \_\_\_\_\_ \*of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs,

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\* Here insert name of proper officer.

*(The First Schedule. Appendix D.—Decrees.)*

when so taxed, be paid out of the said sum of Rs. ordered  
to be paid into Court as aforesaid, as follows :—

(a) The costs of the plaintiff to Mr. , his  
attorney [*or* pleader] *or* and the costs of the defendant to Mr. , his attorney [*or* pleader].

(b) And (if any debts are due) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's  
costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the  
certificate, of the \*, together with subsequent  
interest on such of the debts as bear interest, be paid ; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule,  
together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

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No. 19.

PRELIMINARY DECREÈE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(Title.)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff ;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy ;

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the \*, pay to  
the plaintiff the amount of what the \*shall certify to be  
due for principal and interest ;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

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No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(Title.)

1. LET the \*of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from  
the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said

\*, and let the defendant retain for her own use out of such sum her costs, when taxed.

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\* Here insert name of proper officer.

*(The First Schedule. Appendix D.—Decrees.)*

2. And it is ordered that the residue of the said sum of Rs. \_\_\_\_\_, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

- (a) Let the defendant, within one week after the taxation of the said costs by the \_\_\_\_\_ \*as aforesaid, pay one-third share of the said residue to the plaintiffs *A. B.*, and *C. D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said *E. F.*, the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the \_\_\_\_\_ \*as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

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No. 21.

PRELIMINARY DECREÈ IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE  
TAKING OF PARTNERSHIP ACCOUNTS.

*(Title.)*

It is declared that the proportionate shares of the parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [*or* shall be deemed to have been dissolved] as from the \_\_\_\_\_ day of \_\_\_\_\_, and it is ordered that the dissolution thereof as from that day be advertised in the \_\_\_\_\_ Gazette, etc.

And it is ordered that \_\_\_\_\_ be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

- 1. An account of the credits, property and effects now belonging to the said partnership ;
- 2. An account of the debts and liabilities of the said partnership ;
- 3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the \_\_\_\_\_ \*may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the \_\_\_\_\_ day of \_\_\_\_\_

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\* Here insert name of proper officer.

*(The First Schedule. Appendix D.—Decrees.)*

and that the \_\_\_\_\_ \*do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the \_\_\_\_\_ day of \_\_\_\_\_.

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the \_\_\_\_\_ day of \_\_\_\_\_.

## No. 22.

## FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

*(Title.)*

It is ordered that the fund now in Court, amounting to the sum of Rs. \_\_\_\_\_, be applied as follows:—

1. In payment of the debts due by the partnership set forth in the certificate of the \_\_\_\_\_ \*amounting in the whole to Rs. \_\_\_\_\_.

2. In payment of the costs of all parties in this suit, amounting to Rs. \_\_\_\_\_.

*[These costs must be ascertained before the decree is drawn up.]*

3. In payment of the sum of Rs. \_\_\_\_\_ to the plaintiff as his share of the partnership-assets, of the sum of Rs. \_\_\_\_\_, being the residue of the said sum of Rs. \_\_\_\_\_ now in Court, to the defendant as his share of the partnership-assets.

*[Or, And that the remainder of the said sum of Rs. \_\_\_\_\_ be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. \_\_\_\_\_ certified to be due to him in respect of the partnership-accounts.]*

4. And that the defendant [*or* plaintiff] do on or before the day of \_\_\_\_\_ pay to the plaintiff [*or* defendant] the sum of Rs. \_\_\_\_\_ being the balance of the said sum of Rs. \_\_\_\_\_ due to him, which will then remain due.

## No. 23.

## DÉCREE FOR RECOVERY OF LAND AND MESNE PROFITS.

*(Title.)*

It is hereby decreed as follows:—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. \_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

*Or*

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

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\* Here insert name of proper officer.

(*The First Schedule. Appendix D.—Decrees. Appendix E —Execution.*)

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

*Schedule.*

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APPENDIX E.  
EXECUTION.

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No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE  
RECORDED AS CERTIFIED.

(O. 21, r. 2.)

(*Title.*)

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of Rs.                      recoverable under the decree has been  $\frac{\text{paid}}{\text{adjusted}}$  and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of                      19   , to show cause why the  $\frac{\text{payment}}{\text{adjustment}}$  aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19   .

*Judge.*

---

No. 2.

PRECÈPT. (Section 46.)

(*Title.*)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of                      at                      under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

*Schedule.*

Dated the                      day of                      19   

*Judge*

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No. 3.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT. (O. 21, r. 6.)  
(*Title.*)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of                      at

*(The First Schedule. Appendix E.—Execution.)*

for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

*Ordered :*

That a copy of this order be sent to  
with a copy of the decree and of any order which may have been made for  
execution of the same and a certificate of non-satisfaction.

Dated the                      day of                      19                      .  
Judge.

## No. 4.

## CERTIFICATE OF NON-SATISFACTION OF DECREE. (O. 21, r. 6.)

*(Title.)*

CERTIFIED that no (1) satisfaction of the decree of this Court in Suit  
No.                      of 19                      , a copy which is hereunto attached, has  
been obtained by execution within the jurisdiction of this Court.

Dated the                      day of                      19                      .  
Judge.

(1) If partial, strike out "no" and state to what extent.

## No. 5.

## CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT.

(O. 21, r. 6.)

*(Title.)*

Number of suit and the Court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereof.	Costs of execution.	Amount realized.	How the case is disposed of.	Remarks.
1	2	3	4	5	6	7	8	9
					Rs. a. p.	Rs. a. p.		

Signature of Muharrir in charge.

Signature of Judge.



## (The First Schedule. Appendix E.—Execution.)

## No. 6.

## APPLICATION FOR EXECUTION OF DECREE. (O. 21, r. 11.)

In the Court of

I \_\_\_\_\_, decree-holder, hereby apply for execution of the decree herein below set forth:—

1	No of suit	2	Names of parties.	3	Date of decree.	4	Whether any appeal pre-ferred from decree.	5	Payment or adjustment made, if any.	6	Previous application, if any, with date and result	7	Amount with interest due upon the decree or other relief granted thereby together with particu-lars of any cross decree	8	Amount of costs, if any, awarded.	9	Against whom to be exe-cuted.	10	Mode in which the assistance of the Court is required
789 of 1897.		A. B.—Plaintiff C. D.—Defendant	... ..	... ..	October 11, 1897.	No.		None.		Rs. 72-4-0 recorded on application, dated the 4th March, 1899.		Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment].		Rs. a. p. 47 10 4 8 2 0 Total 55 12 4		Against the defendant C. D.		<p>[When attachment and sale of moveable property is sought]</p> <p>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me.</p> <p>[When attachment and sale of immoveable property is sought]</p> <p>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by the attachment and sale of defendant's im-moveable property specified at the foot of this application and paid to me.</p>	
		As awarded in the decree Subsequently incurred	... ..	... ..															

*(The First Schedule. Appendix E.—Execution.)*

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed \_\_\_\_\_, decree-holder.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

[When attachment and sale of immoveable property is sought]

*Description and Specification of Property.*

The undivided one-third share of the judgment-debtor in a house situated in the village of \_\_\_\_\_, value Rs. 40, and bounded as follows:—

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed \_\_\_\_\_, decree-holder.

---

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

<sup>1</sup>[(O. 21, r. 16.)]

(Title.)

To

WHEREAS \_\_\_\_\_ has made application to this Court for execution of decree in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_, on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 .

Judge.

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No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A  
DECREE FOR MONEY. (O. 21, r. 30.)

(Title.)

To

The Bailiff of the Court.  
WHEREAS \_\_\_\_\_ was ordered by decree of this Court passed  
on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, in Suit No. \_\_\_\_\_

---

<sup>1</sup> Subs. for " (O. 21, r. 22) " by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

*(The First Schedule. Appendix E.—Execution.)*

Decree.			
Principal . . .			
Interest . . .			
Costs . . .			
Costs of execution .			
Further interest .			
Total .			

of 19 , to pay to the plaintiff the sum of Rs. as noted in the margin ; and whereas the said sum of Rs. has not been paid ; These are to command you to attach the moveable property, of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said , and unless the said shall pay to you the said sum of Rs. together with Rs. ,

the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Schedule.*

*Judge.*

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED BY  
DECREE. (O. 21, r. 31.)  
(Title.)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to deliver to the plaintiff the moveable property (or a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered ;

These are to command you to seize the said moveable property (or a share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Schedule.*

*Judge.*

WHEREAS \_\_\_\_\_ has made application to this Court for execution of decree in suit No. \_\_\_\_\_ of 19 \_\_\_\_\_ by arrest and imprisonment of your person, you are hereby required to appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, to show cause why you should not be committed to the civil prison in execution of the said decree.

*(The First Schedule. Appendix E.—Execution.)*

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_  
Judge.

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No. 13.

WARRANT OF ARREST IN EXECUTION. (O. 21, r. 38.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS  
of the Court in Suit No.

was adjudged by a decree  
of 19 \_\_\_\_\_, dated the

Decree.			
Principal . . .			
Interest . . .			
Costs . . .			
Execution . . .			
Total .			

day of \_\_\_\_\_ 19 \_\_\_\_\_,  
to pay to the decree-holder the sum of  
Rs. \_\_\_\_\_ as noted in the margin,  
and whereas the said sum of Rs. \_\_\_\_\_  
has not been paid to the said decree-holder  
in satisfaction of the said decree; These are  
to command you to arrest the said judgment-  
debtor and unless the said judgment-debtor  
shall pay to you the said sum of Rs. \_\_\_\_\_  
together with Rs. \_\_\_\_\_ for the costs of  
executing this process, to bring the said

defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the  
\_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, with an endorsement  
certifying the day on which and manner in which it has been executed, or the  
reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_  
Judge.

---

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL. (O. 21, r. 40.)

*(Title.)*

To

The Officer in charge of the Jail at

WHEREAS \_\_\_\_\_ who has  
been brought before this Court this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_, under a warrant in execution of a decree which was made and pro-  
nounced by the said Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
and by which decree it was ordered that the said \_\_\_\_\_  
should pay \_\_\_\_\_; And whereas the  
said \_\_\_\_\_ has not

*(The First Schedule. Appendix E.—Execution.)*

obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody ; You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said  
 into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said  
 shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908 ; and the Court does hereby fix annas per diem as the rate of the  
 monthly allowance for the subsistence of the said during  
 his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this day  
 of 19 .

*Judge.*

---

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE.

(Sections 58, 59.)

(Title.)

To

The Officer in charge of the Jail at  
 UNDER orders passed this day, you are hereby directed to set free  
 judgment-debtor now

in your custody.

Dated

*Judge.*

---

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF  
 MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A

LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE

POSSESSION THEREOF (O. 21, r. 46.)

(Title.)

To

WHEREAS  
 has failed to satisfy a decree passed against on the  
 day of 19 , in Suit No. of 19 , in  
 favour of for Rs. ; It is ordered that the  
 defendant be, and is hereby, prohibited and restrained until the further order  
 of this Court, from receiving from the follow-  
 ing property in the possession of the said ,  
 that is to say, , to which the defendant is entitled, subject  
 to any claim of the said , and the  
 said is hereby prohibited and restrained,

*(The First Schedule. Appendix E.—Execution.)*

until the further order of this Court, from delivering the said property to any person or persons whomsoever

GIVEN under my hand and the seal of the Court, this day  
of 19 .

*Judge.*

---

No. 17.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

(O. 21, r. 46.)

*(Title.)*

To

WHEREAS

has failed to satisfy a decree passed against on the  
day of 19 , in Suit

No. of 19 , in favour of

for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day  
of 19 .

*Judge.*

---

No. 18.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION. (O. 21, r. 46.)

*(Title.)*

To

to , Secretary of defendant and Corporation.

WHEREAS has failed to satisfy a decree  
passed against on the  
day of 19 , in Suit No.

of 19 , in favour of , for Rs. ;  
It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer

*(The First Schedule. Appendix E.—Execution.)*

of \_\_\_\_\_ shares in the aforesaid Corporation, namely,  
 \_\_\_\_\_, or from receiving payment of any dividends thereon ;  
 and you, \_\_\_\_\_, the Secretary of the said Corporation, are  
 hereby prohibited and restrained from permitting any such transfer or making  
 any such payment.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
 of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

## No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY  
 COMPANY OR LOCAL AUTHORITY. (O 21, r. 48.)

*(Title.)*

To

WHEREAS

judgment-debtor in the above-named case, is a (*describe office of judgment-debtor*) receiving his salary (*or* allowances) at your hands ; and whereas  
 \_\_\_\_\_, decree-holder in the said case, has applied in this Court  
 for the attachment of the salary (*or* allowances) of the said  
 to the extent of \_\_\_\_\_ due to him under the decree ; You are  
 hereby required to withhold the said sum of \_\_\_\_\_ from the salary  
 of the said \_\_\_\_\_ in monthly instalments of \_\_\_\_\_  
 and to remit the said sum (*or* monthly instalments) to this  
 Court.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
 of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

## No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT. (O. 21, r. 51.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_, for the attachment of  
 \_\_\_\_\_ ; You are hereby directed to seize  
 the said \_\_\_\_\_ and bring the same into  
 Court.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
 of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*



*(The First Schedule. Appendix E.—Execution.)*

No. 21.

## ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR <sup>1</sup>[PUBLIC OFFICER]. (O 21, r. 52.)

*(Title.)*

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, etc.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

Dated the

day of

19 .

*Judge.*

No. 22.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT.

(O. 21, r. 53.)

*(Title.)*

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 , by \_\_\_\_\_ in Suit No. \_\_\_\_\_ of 19 , in which he was \_\_\_\_\_ and \_\_\_\_\_ was \_\_\_\_\_

has been attached by this Court on the application of \_\_\_\_\_ the \_\_\_\_\_ in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

Dated the

day of

19 .

*Judge.*


---

<sup>1</sup> Subs. by the A. O. 1937 for "Officer of Govt.",

*(The First Schedule. Appendix E.—Execution.)*

## No. 23.

## NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE.

(O. 21, r. 66.)

*(Title.)*

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in the Court of \_\_\_\_\_ in Suit No. \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_, in which \_\_\_\_\_ was \_\_\_\_\_ and \_\_\_\_\_ was \_\_\_\_\_; It is ordered that you, the said \_\_\_\_\_, be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

## No. 24.

## ATTACHMENT IN EXECUTION.

## PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY. (O. 21, r. 54.)

*(Title.)*

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in Suit No. \_\_\_\_\_ of 19\_\_\_\_, in favour of \_\_\_\_\_ for Rs. \_\_\_\_\_; It is ordered that you, the said \_\_\_\_\_, be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Schedule.**Judge.*

*(The First Schedule. Appendix E.—Execution.)*

## No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS  
OF A THIRD PARTY. (O. 21, r. 56.)

*(Title.)*

To

WHEREAS the following property has been  
attached in execution of a decree in Suit No. of  
19, passed on the day of  
19, in favour of  
for Rs. ; It is ordered that the property  
so attached, consisting of Rs. in money and Rs.  
in currency-notes, or a sufficient part thereof to satisfy the said decree, shall  
be paid over by you, the said  
to

GIVEN under my hand and the seal of the Court, this day  
of 19.

*Judge.*

## No. 26.

NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58.)

*(Title.)*

To

WHEREAS has made application to this  
Court for the removal of attachment on  
placed at your instance in execution of the decree in Suit No.  
of 19, this is to give you notice to appear before this Court on  
the day of 19  
either in person or by a pleader of the Court duly instructed to support your  
claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day  
of 19.

*Judge.*

## No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

(O. 21, r. 66.)

*(Title.)*

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving  
days' previous notice, by affixing the same in this Court-house, and after  
making due proclamation, the

property attached under

*(The First Schedule. Appendix E.—Execution.)*

a warrant from this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in execution of a decree in favour of \_\_\_\_\_ of 19\_\_\_\_, or so much of the said property as shall realize the sum of Rs. \_\_\_\_\_, being the \_\_\_\_\_ of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

No. 28.

NOTICE OF THE DAY FIXED FOR SETTling A SALE PROCLAMATION. (O. 21, r. 66 )  
(*Title.*)

To

Judgment-debtor.

WHEREAS in the above-named suit \_\_\_\_\_, the decree-holder, has applied for the sale of \_\_\_\_\_  
You are hereby informed \_\_\_\_\_  
that the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

No. 29.

PROCLAMATION OF SALE. (O. 21, r. 66.)  
(*Title.*)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of \_\_\_\_\_.

(1) Suit No \_\_\_\_\_ of \_\_\_\_\_  
19\_\_\_\_, decided by the \_\_\_\_\_  
of \_\_\_\_\_ in which \_\_\_\_\_  
was plaintiff \_\_\_\_\_  
and \_\_\_\_\_ was \_\_\_\_\_  
defendant \_\_\_\_\_

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below ; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot,

*(The First Schedule. Appendix E.—Execution.)*

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at o'clock on the at . In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further

*Conditions of Sale.*

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immoveable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this day of 19

*Judge.*

## (The First Schedule. Appendix E.—Execution.)

## Schedule of Property.

Number of lot	Description of property to be sold, with the name of each owner where there are more judgment - debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value.

No. 30.

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE.

(O. 21, r. 66.)

(Title.)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 has been fixed for the sale of the said property, copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the

day of

19 .

Schedule.

Judge.

No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RESALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT. (O. 21, r. 71.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of ,

*(The First Schedule. Appendix E.—Execution.)*

purchaser, there was a deficiency in the price of the said property amounting to Rs. , and that the expenses attending such re-sale amounted to Rs. , making a total Rs. , which sum is recoverable from the defaulter.

Dated the                      day of                      19 .  
*Officer holding the sale.*

## No. 32.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN  
 EXECUTION. (O. 21, r. 79.)

*(Title.)*

To

WHEREAS

has become the purchaser at a public sale in execution of the decree in the above suit of

now in your possession, you are hereby prohibited from delivering possession of the said                      to any person except the said

GIVEN under my hand and the seal of the Court, this                      day  
 of                      19 .

*Judge.*

## No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY  
 OTHER THAN THE PURCHASER. (O. 21, r. 79.)

*(Title.)*

To

and to

WHEREAS                      has  
 become the purchaser at a public sale in execution of the decree in the above  
 suit of

being debts due from you  
 to you

; It is ordered that you

be, and you are hereby, prohibited from  
 receiving, and you                      from making  
 payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court, this                      day  
 of                      19

*Judge.*

*(The First Schedule. Appendix E.—Execution.)*

## No. 34.

## PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

(O. 21, r. 79.)

*(Title.)*

To

and

, Secretary of

Corporation.

WHEREAS \_\_\_\_\_ has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of \_\_\_\_\_ standing in the name of you \_\_\_\_\_

; It is

ordered that you

be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said \_\_\_\_\_, the purchaser aforesaid, or from receiving any dividends thereon ; and you \_\_\_\_\_, Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said \_\_\_\_\_, the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*Judge.*

## No. 35.

## CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO MORTGAGE, LEASE OR SELL PROPERTY. (O. 21, r. 83.)

*(Title.)*

WHEREAS in execution of the decree passed in the above suit an order was made on the \_\_\_\_\_ day of \_\_\_\_\_ 19 , for the sale of the under-mentioned property of the judgment-debtor \_\_\_\_\_, and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorise the said judgment-debtor to make the proposed mortgage, lease or sale within a period of \_\_\_\_\_ from the date of this certificate; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

*Description of property.*

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19

*Judge.*



*(The First Schedule. Appendix E.—Execution.)*

## No. 36.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.

(O. 21, rr. 90, 92.)

*(Title.)*

To

WHEREAS the under-mentioned property was sold on the  
day of \_\_\_\_\_ 19\_\_\_\_, in execution of the decree passed in the  
above-named suit, and whereas \_\_\_\_\_, the decree-holder  
[or judgment-debtor], has applied to this Court to set aside the sale of the  
said property on the ground of a material irregularity [or fraud] in pub-  
lishing [or conducting] the sale, namely that

Take notice that if you have any cause to show why the said application  
should not be granted, you should appear with your proofs in this Court on  
the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, when the said appli-  
cation will be heard and determined.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_.

*Description of property.**Judge.*

## No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.

(O. 21, rr. 90, 92.)

*(Title.)*

To

WHEREAS \_\_\_\_\_, the purchaser  
of the under-mentioned property sold on the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, in execution of the decree passed in the above-named  
suit, has applied to this Court to set aside the sale of the said property on  
the ground that \_\_\_\_\_, the  
judgment-debtor, had no saleable interest therein:

Take notice that if you have any cause to show why the said application  
should not be granted, you should appear with your proofs in this Court  
on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, when the said  
application will be heard and determined.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_.

*Description of property.**Judge.*

## No. 38.

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94.)

*(Title.)*

THIS is to certify that \_\_\_\_\_ has been declared  
the purchaser at a sale by public auction on the \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_\_\_, of \_\_\_\_\_

\_\_\_\_\_ in execution of decree  
in this suit, and that the said sale has been duly confirmed by this Court.

*(The First Schedule. Appendix E.—Execution.)*

GIVEN under my hand and the seal of the Court, this                      day  
of                      19 .

*Judge.*

---

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN  
EXECUTION. (O. 21, r. 95.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS                      has become  
the certified purchaser of                      at a  
sale in execution of decree in suit No.                      of

19 ; You are hereby ordered to put the said                      ,  
the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19 .

*Judge.*

---

No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF  
DECREE. (O. 21, r. 97.)

*(Title.)*

To

WHEREAS                      , the  
decree-holder in the above suit, has complained to this Court that you have  
resisted (*or* obstructed) the officer charged with the execution of the warrant  
for possession:

You are hereby summoned to appear in this Court on the  
day of                      19 at                      A.M., to answer the said  
complaint.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19 .

*Judge.*

---

No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98)

*(Title.)*

To

The Officer in Charge of the Jail at

WHEREAS the under-mentioned property has been decreed to  
the plaintiff in this suit, and whereas the Court is satisfied that  
without any just cause resisted [*or* obstructed] and is still resisting [*or*  
obstructing] the said                      in obtaining possession of the  
property, and whereas the said                      has made application to  
this Court that the said                      be committed to the civil prison;

You are hereby commanded and required to take and receive the said

(The First Schedule. Appendix E.—Execution. Appendix F.—Supplemental Proceedings.)

into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND. (Section 72.)  
(Title.)

To

, Collector of

SIR,

In answer to your communication No. , dated

, representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the honour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,

Your obedient Servant,  
Judge.

## APPENDIX F.

### SUPPLEMENTAL PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)  
(Title.)

To

The Bailiff of the Court.

WHEREAS  
suit, claims the sum of Rs.

Principal . . .		
Interest . . .		
Costs . . .		
Total . . .		

, the plaintiff in the above  
as noted in the margin,  
and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant  
is about to ;

These are to command you to demand and receive from the said  
the sum of Rs. as  
sufficient to satisfy the plaintiff's claim,  
and unless the said sum of Rs.  
is forthwith delivered to you by or on  
behalf of the said  
to take the said

into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security

*(The First Schedule. Appendix F.—Supplemental Proceedings.)*

to the amount of Rs. \_\_\_\_\_ for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*Judge.*

---

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT.

(O. 38, r. 2.)

*(Title.)*

WHEREAS at the instance of \_\_\_\_\_, the plaintiff in the above suit, \_\_\_\_\_ the defendant, has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I \_\_\_\_\_ have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*(Signed.)*

Witnesses.

- 1.
- 2.

---

No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE. (O. 38, r. 3.)

*(Title.)*

To

WHEREAS \_\_\_\_\_, who became surety on the day of \_\_\_\_\_ 19 , for your appearance in the above suit, has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the \_\_\_\_\_ day of \_\_\_\_\_ 19 , at \_\_\_\_\_ A.M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*Judge.*

(The First Schedule. Appendix F.—Supplemental Proceedings.)

No. 4.

ORDER FOR COMMITTAL. (O. 38, r. 4.)

(Title.)

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r. 5.)

(Title.)

To

The Bailiff of the Court.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit ;

These are to command you to call upon the said defendant on or before the day of 19 , either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 . with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY. (O. 38, r. 5.)

(Title.)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant has been directed by

*(The First Schedule. Appendix F.—Supplemental Proceedings.)*

the Court to furnish security in the sum of Rs. \_\_\_\_\_ to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore I \_\_\_\_\_ have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs. \_\_\_\_\_ or such sum not exceeding the said sum as the said Court may adjudge.

*Schedule.*

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*(Signed.)*

Witnesses.

1.

2.

---

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

(O. 38, r. 6.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_, the plaintiff in this suit, has applied to the Court to call upon \_\_\_\_\_, the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said \_\_\_\_\_ to furnish such security, which he has failed to do; These are to command you to attach \_\_\_\_\_, the property of the said \_\_\_\_\_, and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 19 .

*Judge.*

---

No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

*(Title.)*

Upon motion made unto this Court by \_\_\_\_\_, Pleader of [or Counsel for] the plaintiff A. B., and upon reading the petition of the

*(The First Schedule. Appendix F.—Supplemental Proceedings.)*

said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the                      day of                      , or the written statement of the said plaintiff filed on the                      day of                      ] and upon hearing the evidence of

and                      in support thereof [*if after notice and defendant not appearing: add*, and also the evidence of                      as to service of notice of this motion upon the defendant C. D.]: This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned*], being No. 9, Oilmongers Street, Hindupur, in the Taluk of                      , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this                      day of                      ... 19                      .

*Judge.*

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—*]

to restrain the defendants                      and                      from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or bill of exchange*] in question, dated on or about the                      , etc , mentioned in the plaintiff's plaint [*or petition*] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[*In Copyright cases*]                      to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called                      , or any part thereof, until the, etc.

[*Where part only of a book is to be restrained*].

to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or petition and evidence, etc.*] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled                      and also that part which is entitled                      [*or which is contained in page                      both inclusive*] until                      , etc.

[*In Patent cases*]                      to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [*or as the case may be*] upon the principle of the inventions in the plaintiff's plaint [*or petition, etc., or written statement, etc.,*] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[*In cases of Trade marks*]                      to restrain the defendant C. D., his servants, agents or workmen, from selling or exposing for sale, or

*(The First Schedule. Appendix F.—Supplemental Proceedings.)*

procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

*[To restrain a partner from in any way interfering in the business.]*

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

---

No. <sup>1</sup>[9].

APPOINTMENT OF A RECEIVER. (O. 40, r. 1.)

*(Title.)*

To

WHEREAS \_\_\_\_\_ has been attached in execution of a decree passed in the above suit on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in favour of \_\_\_\_\_; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on \_\_\_\_\_. You will be entitled to remuneration at the rate of \_\_\_\_\_ per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Judge.*

---

<sup>1</sup> The number of the form, originally misprinted as 6, was corrected by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.



(The First Schedule. Appendix F.—Supplemental Proceedings. Appendix G.—Appeal, Reference and Review.)

No. <sup>1</sup>[10].

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(Title.)

KNOW all men by these presents, that we, \_\_\_\_\_ and \_\_\_\_\_, are jointly and severally bound to \_\_\_\_\_ of the Court of \_\_\_\_\_ in Rs. \_\_\_\_\_ to be paid to the said \_\_\_\_\_ or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

Whereas a plaint has been filed in this Court by \_\_\_\_\_ against \_\_\_\_\_ for the purpose of [*here insert the object of suit*]:

And whereas the said \_\_\_\_\_ has been appointed, by order of the above-mentioned Court to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of \_\_\_\_\_ in the said plaint named:

Now the condition of this obligation is such, that if the above-bounden \_\_\_\_\_ shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said \_\_\_\_\_ at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of \_\_\_\_\_

*Note.*—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

## APPENDIX G.

### APPEAL, REFERENCE AND REVIEW.

No. I.

MEMORANDUM OF APPEAL. (O. 41, r. 1.)

(Title.)

The

\_\_\_\_\_ Court at \_\_\_\_\_ above-named appeals to the \_\_\_\_\_ from the decree of \_\_\_\_\_ in Suit No. \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_ , dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ , and sets forth the following grounds of objection to the decree appealed from, namely:—

<sup>1</sup> The number of the form, originally misprinted as 7, was corrected by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

(The First Schedule. Appendix G.—Appeal, Reference and Review.)

No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF  
DECREE. (O. 41, r. 5.)

(Title.)

To

THIS security bond on stay of execution of decree executed by  
witnesseth:—

That \_\_\_\_\_, the plaintiff in Suit No. \_\_\_\_\_ of  
19 \_\_\_\_\_, having sued \_\_\_\_\_, the defendant, in this Court and a  
decree having been passed on the \_\_\_\_\_ day of  
19 \_\_\_\_\_ in favour of the plaintiff, and the defendant having preferred an appeal  
from the said decree in the \_\_\_\_\_ Court, the said appeal is  
still pending.

Now the plaintiff decree-holder having applied to execute the decree, the  
defendant has made an application praying for stay of execution and has  
been called upon to furnish security. Accordingly I, of my own free will,  
stand security to the extent of Rs. \_\_\_\_\_, mortgaging the properties  
specified in the schedule hereunto annexed, and covenant that if the decree  
of the first Court be confirmed or varied by the Appellate Court the said  
defendant shall duly act in accordance with the decree of the Appellate Court  
and shall pay whatever may be payable by him thereunder, and if he should  
fail therein then any amount so payable shall be realized from the properties  
hereby mortgaged, and if the proceeds of the sale of the said properties are  
insufficient to pay the amount due, I and my legal representatives will be  
personally liable to pay the balance. To this effect I execute this security  
bond this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Schedule.

(Signed.)

Witnessed by

- 1.
- 2.

No. 3.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL.

(O. 41, r. 6.)

(Title.)

To

THIS security bond on stay of execution of decree executed by  
witnesseth:—

That \_\_\_\_\_, the plaintiff in Suit No. \_\_\_\_\_ 19  
having sued \_\_\_\_\_, the defendant, in this Court and a decree  
having been passed on the \_\_\_\_\_ day of  
19 \_\_\_\_\_ in favour of the plaintiff, and the defendant having preferred an  
appeal from the said decree in the \_\_\_\_\_ Court, the said  
appeal is still pending.

(*The First Schedule. Appendix G.—Appeal, Reference and Review.*)

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this

day of 19 .

*Schedule.*

(*Signed.*)

Witnessed by

- 1.
- 2.

---

No. 4.

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.)

(*Title.*)

To

THIS security bond for costs of appeal executed by  
witnesseth :—

This appellant has preferred an appeal from the decree in Suit No. of 19 , against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19

*Schedule.*

(*Signed.*)

Witnessed by

- 1.
- 2.

(*The First Schedule. Appendix G.—Appeal, Reference and Review.*)

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL. (O. 41, r. 13.)  
(*Title.*)

To

You are hereby directed to take notice that  
the                      in the above suit, has preferred an appeal to this Court  
from the decree passed by you therein on the                      day  
of                      19 .

You are requested to send with all practicable despatch all material  
papers in the suit.

Dated the                      day of                      19 .

*Judge.*

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.  
(O. 41, r. 14.)  
(*Title.*)

APPEAL from the                      of the Court of  
dated the                      day of                      19 .  
To

Respondent.

TAKE notice that an appeal from the decree of  
in this case has been presented by                      and registered  
in this Court, and that the                      day of  
19                      has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by  
some one by law authorised to act for you in this appeal, it will be heard and  
decided in your absence.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19 .

*Judge.*

[*Note.*—If a stay of execution has been ordered, intimation should be  
given of the fact on this notice.]

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED  
BY THE COURT AS A RESPONDENT.

(O. 41, r. 20.)

(*Title.*)

To

WHEREAS you were a party in suit No.                      of 19  
in the Court of                      , and whereas the  
has preferred an appeal to this Court from the decree passed against him

(*The First Schedule. Appendix G.—Appeal, Reference and Review.*)

in the said suit and it appears to this Court that you are interested in the result of the said appeal :

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the                      day of                      19                      , at                      A.M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this                      day of                      19                      .

*Judge.*

---

No. 8.

MEMORANDUM OF CROSS OBJECTION. (O. 41, r. 22.)

(*Title.*)

WHEREAS the                      has preferred an appeal to the                      Court at                      from the decree of                      in Suit No.                      of 19                      , dated the                      day of                      19                      , and whereas notice of the day fixed for hearing the appeal was served on the                      on the                      day of                      19                      , the                      files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from namely :—

---

No. 9.

DECREE IN APPEAL. (O. 41, r. 35.)

(*Title.*)

Appeal No.                      of 19                      from the decree of the Court of                      date the                      day of                      19                      .

Memorandum of Appeal.

*Plaintiff.*  
*Defendant.*

The                      above-named appeals to the                      Court at                      from the decree of                      in the above suit, dated the                      day of                      19                      for the following reasons namely :—

This appeal coming on for hearing on the                      day of                      19                      , before                      , in the presence of                      for the appellant and of                      for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs.                      are to be paid by                      The costs of the original suit are to be paid by                      .

(The First Schedule. Appendix G.—Appeal, Reference and Review.)

GIVEN under my hand this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 .

Judge.

*Costs of Appeal.*

Appellant.	Amount.			Respondent	Amount.		
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for memorandum of appeal.				Stamp for power . .			
2. Do. for power . .				Do. for petition . .			
3. Service of processes .				Service of processes .			
4 Pleader's fee on Rs. .				Pleader's fee on Rs .			
TOTAL .				TOTAL .			

No. 10.

APPLICATION TO APPEAL *in formâ pauperis*. (O. 44, r. 1.)

(Title.)

I \_\_\_\_\_ the \_\_\_\_\_ above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(Signed.)

*Note.*—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.

NOTICE OF APPEAL *in formâ pauperis*. (O. 44, r. 1.)

(Title.)

WHEREAS the above-named \_\_\_\_\_ has applied to be allowed to appeal as a pauper from the decree in the above suit dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 and whereas the \_\_\_\_\_ day of \_\_\_\_\_ 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19

Judge.

(The First Schedule. Appendix G.—Appeal, Reference and Review.)

No. 12.

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE <sup>1</sup>[KING IN  
COUNCIL] SHOULD NOT BE GRANTED (O. 45, r. 3.)

(Title.)

To

TAKE notice that  
has applied to this Court for a certificate that as regards amount or value  
and nature the above case fulfils the requirements of section 110 of the Code  
of Civil Procedure, 1908, or that it is otherwise a fit for appeal to <sup>1</sup>[His  
Majesty in Council].

The \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ is fixed  
for you to show cause why the Court should not grant the certificate asked  
for.

GIVEN under my hand and the seal of the Court, this                      day  
of    19

*Registrar.*

No. 13.

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE <sup>1</sup>[KING IN  
COUNCIL] (O. 45, r. 8.)

(Title.)

To

WHEREAS

WHEREAS \_\_\_\_\_, the \_\_\_\_\_, in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908:

Take notice that the appeal of the said to 1[His Majesty in Council] has been admitted on the day of

GIVEN under my hand and the seal of the Court, this                  day  
of                  19 .

*Registrar.*

No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

(O. 47, r. 4.)

(Title.)

To

TAKE notice that \_\_\_\_\_ has applied to this Court for a review of its decree passed on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ in the above case. The \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ is fixed for you to show cause why the Court should not grant a review of its decree in this case.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19

*Judge.*

<sup>1</sup>These references are now to be read and construed as if the references had been to the "Federal Court". See the Federal Court Enlargement of Jurisdiction Act, 1947 (1 of 1948).

(The First Schedule. Appendix H.—Miscellaneous.)

## APPENDIX H. MISCELLANEOUS.

### No. 1.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED. (O. 14, r. 6.)

(Title.)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or or law*] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the                      day of 19                      and filed as Exhibit                      in the said suit, is or is not beyond the statute of limitation (*or state the point at issue whatever it may be*) :

We therefore severally bind ourselves that, upon the finding of the Court in the negative [*or affirmative*] of such issue,                      will pay to the said                      the sum of Rupees                      (*or such sum as the Court shall hold to be due thereon*), and I, the said                      will accept the said sum of Rupees                      (*or such sum as the Court shall hold to be due*) in full satisfaction of my claim on the bond aforesaid [*or that upon such finding I, the said                      , will do or abstain from doing, etc., etc.*]

*Plaintiff.*  
*Defendant.*

1.

2.

Dated the                      day of                      19

### No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT  
FOR TRIAL.

(Section 24.)

In the Court of the District Judge of

No.                      of 19

WHEREAS an application, dated the                      day of 19                      has been made to this Court by                      in Suit No.                      of 19                      now pending in the Court of the                      at                      , in which                      is plaintiff and                      is defendant, for the transfer of the suit for trial to the Court of the                      at                      :—

You are hereby informed that the                      day of 19                      has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this                      day of                      19

*Judge.*





*(The First Schedule. Appendix H.— Miscellaneous.)*

## No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS  
ABOUT TO LEAVE THE JURISDICTION. (O. 18, r. 16.)

*(Title.)*

To

*plaintiff (or defendant).*

WHEREAS in the above suit application has been made to the Court by  
that the examination of \_\_\_\_\_,  
a witness required by the said \_\_\_\_\_, in the said suit may  
be taken immediately, and it has been shown to the Court's satisfaction  
that the said witness is about to leave the Court's jurisdiction (*or any other  
good and sufficient cause to be stated*):

TAKE notice that the examination of the said witness  
will be taken by the Court on the \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
\_\_\_\_\_  
*Judge.*

## No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS (O. 26, rr. 4, 18.)

*(Title.)*

To

WHEREAS the evidence of \_\_\_\_\_ is required by the  
\_\_\_\_\_ in the above suit; and whereas \_\_\_\_\_;  
you are requested to take the evidence on interrogatories [*or viva voce*] of  
such witness \_\_\_\_\_, and you are hereby appointed Commissioner  
for that purpose. The evidence will be taken in the presence of the parties  
or their agents if in attendance, who will be at liberty to question the witness  
on the points specified, and you are further requested to make return of such  
evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any  
Court having jurisdiction on your application.

A sum of Rs. \_\_\_\_\_, being your fee in the above, is herewith for-  
warded.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge.*

## No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

*(Title.)*

(Heading:—To the President and Judges of, etc., etc., *or as the case may be.*)

WHEREAS a suit is now pending in the  
in which A. B. is plaintiff and C. D. is defendant; And in the said suit  
the plaintiff claims

## (The First Schedule. Appendix H.—Miscellaneous.)

## (Abstract of claim.)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of

G. H., of

I. J., of

and

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court,

Now I \_\_\_\_\_, as the \_\_\_\_\_ of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said \_\_\_\_\_, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or viva voce*), touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note.—If the request is directed to a Foreign Court, the words “through His Majesty’s Secretary of State for Foreign Affairs for transmission” should be inserted after the words “other witnesses” in the last line of this form.)

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No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

(O. 26, rr. 9, 11.)

(Title.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for \_\_\_\_\_ should be issued ; You are hereby appointed Commissioner for the purpose of \_\_\_\_\_

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

*(The First Schedule Appendix H.— Miscellaneous.)*

A sum of Rs. \_\_\_\_\_, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

*Judge.*

No. 10.

COMMISSION TO MAKE A PARTITION. (O. 26, r. 13.)

*(Title.)*

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. \_\_\_\_\_, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

*Judge.*

No. 11.\*

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3.)

*(Title.)*

To

*Minor Defendant.*

*Natural Guardian.*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (1) \_\_\_\_\_, are hereby required to take notice that unless within \_\_\_\_\_ days from the service upon you of this notice, an application is made to this Court for the appointment of you (1) \_\_\_\_\_ or of some friend of you,

(1) Here insert the name of guardian.

*Judge,*

(The First Schedule. Appendix H.—Miscellaneous.)

No. 14.  
RÈGISTER OF CIVIL SUITS. (O. 4, r. 2.)

Court of the  
of  
REGISTER OF CIVIL SUITS IN THE YEAR 19 .  
at

[illegible]

NOTE.—Where there are numerous plaintiffs, or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.



(The Second Schedule. The Third Schedule —Execution of Decrees by Collectors.)

THE SECOND SCHEDULE —[Arbitration.] Rep. by the Arbitration Act, 1940 (X of 1940), s. 49 (1) and Sch. III.

### THE THIRD SCHEDULE

#### EXECUTION OF DECREES BY COLLECTORS.

1. Where the execution of a decree has been transferred to the Collector under section 68, he may—
    - (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
    - (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
    - (c) sell the property ordered to be sold or so much thereof as may be necessary.
  2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.
  3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—
    - (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;
    - (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.
- (2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit ; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Powers of  
Collector.

Procedure of  
Collector in  
special cases

Notice to be  
given to de-  
cree-holders  
and to  
persons  
having  
claims on  
property.



*(The Third Schedule.—Execution of Decrees by Collectors.)*

Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

Where District Court may issue notices and hold inquiry.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Effect of decision of Court as to dispute.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Scheme for liquidation of decrees for payment of money.

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or,

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered

*(The Third Schedule.—Execution of Decrees by Collectors.)*

without such sale, raise such amount and interest (notwithstanding the original order for sale)—

- (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or
- (ii) by mortgaging the whole or any part of such property ; or
- (iii) by selling part of such property ; or
- (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or
- (v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the <sup>1</sup>[Provincial Government].

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Recovery of balance (if any) after letting or management.

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the

Collector to render accounts to Court.

<sup>1</sup> Subs by the A. O. 1937 for "L. G.".

*(The Third Schedule —Execution of Decrees by Collectors.)*

provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to <sup>1</sup>[the Crown] in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and
- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
  - (i) in keeping down the interest on incumbrances on the property;
  - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
  - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incom-

Sales how to be conducted.

Restrictions as to alienation by judgment-debtor or his

<sup>1</sup> Subs. by the A. O. 1937 for "the Govt.",

(The Third Schedule.—Execution of Decrees by Collectors. The Fourth Schedule.—Enactments amended. The Fifth Schedule.—Enactments repealed.)

petent to mortgage charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

representative, and prosecution of remedies by decree-holders.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

12. Where the property of which the sale has been ordered is situated in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the '[Provincial Government] may by general rule or special order direct.

Provision where property is in several districts.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

Powers of Collector to compel attendance and production.

### THE FOURTH SCHEDULE

(See section 155.)

#### ENACTMENTS AMENDED.

1	2	3	4
Year.	No.	Short title.	Amendment.
1870	VII	The Court-fees Act, 1870	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted</p> <p>From article 11 of Schedule II the words "from an order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely:—</p> <p>"Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908".</p>

THE FIFTH SCHEDULE.—[Enactments repealed.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.

## THE EXPLOSIVE SUBSTANCES ACT, 1908.

ACT No. VI OF 1908.<sup>1</sup>

[8th June, 1908.]

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances ; It is hereby enacted as follows :—

Short title,  
extent and  
application.

1. (1) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to <sup>2</sup>[all the Provinces of India] and applies also to—

(a) all <sup>3</sup>[British subjects of Indian Domicile] in any place without and beyond <sup>4</sup>[the Provinces] ;

(b) all other British subjects within <sup>5</sup>[any Acceding State or tribal area].

Definition  
of "explo-  
sive sub-  
stance".

2. In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance ; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance ; also any part of any such apparatus, machine or implement.

Punishment  
for causing  
explosion  
likely to  
endanger life  
or property.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

Punishment  
for attempt  
to cause ex-  
plosion, or  
for making  
or keeping  
explosive  
with intent

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in <sup>4</sup>[the Provinces] of a nature likely to endanger life or to cause serious injury to property ; or

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 170, and for Proceedings in Council, *see ibid.*, 1908, Pt. VI, p. 128.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Sonthal Parganas by notification under s. 3 (3) (a) of the Sonthal Parganas Settlement Regulation (3 of 1872), *see* Calcutta Gazette, 1909, Pt. I, p. 649 ; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch. ; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

<sup>2</sup> Subs. by the A. O. 1948 for "the whole of British India".

<sup>3</sup> Subs. by the A. O. 1948 for "native Indian subjects of His Majesty".

<sup>4</sup> Subs. by the A. O. 1948 for "British India".

<sup>5</sup> Subs. by the A. O. 1948 for "the territories of any native Prince or Chief in India".

1908 : Act IX.]

*Limitation.*

- (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in <sup>1</sup>[the Provinces], or to enable any other person by means thereof to endanger life or cause serious injury to property in <sup>1</sup>[the Provinces] ;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.<sup>2</sup>

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of \* \* \* the <sup>3</sup>[Central Government].

## THE INDIAN LIMITATION ACT, 1908.

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<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> For ss. 5A and 5B applicable to West Bengal only, see the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. 21 of 1932), s. 5, and the Bengal Criminal Law Amendment Act, 1934 (Ben. 7 of 1934), s. 5, respectively. These two sections provide for enhanced punishment in certain cases.

<sup>3</sup> The words "the L. G. or" rep. by the A. O. 1937.

<sup>4</sup> Subs. by the A. O. 1937 for "G. G. in C.".

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## THE FIRST SCHEDULE.—LIMITATION.

THE SECOND AND THIRD SCHEDULES.—[*Repealed.*]ACT No. IX OF 1908<sup>1</sup>.

[7th August, 1908.]

An Act to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts ; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property ; It is hereby enacted as follows:—

## PART I.

## PRELIMINARY.

1. (1) This Act may be called the Indian Limitation Act, 1908.
- (2) It extends to <sup>2</sup>[all the Provinces of India]; and
- (3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.
2. In this Act, unless there is anything repugnant in the subject or context,—
- (1) “applicant” includes any person from or through whom an applicant derives his right to apply:

Short title,  
extent and  
commence-  
ment.

Definitions.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 22 ; for Report of the Select Committee, see *ibid.*, 1908, Pt. V, p. 223 ; and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, pp. 2, 13, 37 and 145.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Sonthal Parganas by notification under s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), see Calcutta Gazette, 1909, Pt. I, p. 640 ; in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch ; and in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2.

<sup>2</sup> Subs. by the A. O. 1948 for “the whole of British India”.



(Part I.—Preliminary. Part II.—Limitation of Suits, Appeals and Applications.)

- (2) "bill of exchange" includes a hundi and a cheque:
- (3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:
- (4) "defendant" includes any person from or through whom a defendant derives his liability to be sued:
- (5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another:
- (6) "foreign country" means any country other than <sup>1</sup>[India, but includes also any Acceding State]:
- (7) "good faith": nothing shall be deemed to be done in good faith which is not done with due care and attention:
- (8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue:
- (9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:
- (10) "suit" does not include an appeal or an application: and
- (11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

## PART II.

### LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of  
suit etc.,  
instituted,  
etc., after  
period of  
limitation

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

*Explanation.*—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Where Court  
is closed  
when period  
expires.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

*(Part II.—Limitation of Suits, Appeals and Applications.)*

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable <sup>1</sup>[by or under any enactment] for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Extension of period in certain cases.

*Explanation.*—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

<sup>2</sup> 6. (1) When a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

Legal disability

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

*Illustrations.*

- (a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrues. He may institute his suit at any time within three years from the date of his attaining majority.
- (b) A right to sue accrues to Z during his minority. After the accrues, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.
- (c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

<sup>1</sup> Subs. by the Indian Limitation (Amendment) Act, 1922 (10 of 1922), s. 2, for "by any enactment or rule".

<sup>2</sup> Ss. 6 to 9 do not apply to suits, appeals or applications under the Bengal Public Demands Recovery Act, 1913 (Ben. 3 of 1913); see s. 56 of that Act.

*(Part II.—Limitation of Suits, Appeals and Applications.)*

Disability  
of one of  
several  
plaintiffs or  
applicants.

<sup>1</sup> 7. Where one of several persons jointly entitle to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

*Illustrations.*

- (a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.
- (b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Special  
exceptions.

<sup>1</sup> 8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

*Illustrations.*

- (a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrual. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.
- (b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.
- (c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Continuous  
running of  
time.

inability to sue stops it:

<sup>1</sup> 9. Where once time has begun to run, no subsequent disability or Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

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<sup>1</sup> See foot-note to s. 6, *supra*.

(Part II.—*Limitation of Suits, Appeals and Applications.* Part III.—  
*Computation of Period of Limitation.*)

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Suits against express trustees and their representatives

<sup>1</sup>[For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.]

11. (1) Suits instituted in <sup>2</sup>[the Provinces] on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act. Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in <sup>2</sup>[the Provinces] on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

### PART III.

#### COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Exclusion of time in legal proceedings.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from <sup>2</sup>[the Provinces] Exclusion of time of defendant's absence from the Provinces and

<sup>1</sup> Ins. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), s. 2.

<sup>2</sup> Subs. by the A. O. 1948 for "British India".

(Part III.—*Computation of Period of Limitation.*)

certain other territories.

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

and from the territories beyond <sup>1</sup>[the Provinces] under the administration of <sup>2</sup>[the Central Government \* \* \*] shall be excluded.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

*Explanation I.*—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

*Explanation II.*—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

*Explanation III.*—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Exclusion of time during which proceedings are suspended.

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

Exclusion of time during which proceedings to set aside execution-sale are pending.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>3</sup> The words "or the Crown Representative" rep. by the A. O. 1948.

*(Part III.—Computation of Period of Limitation.)*

17. (1) Where a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application. Effect of death before right to sue accrues

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, Effect of fraud

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Effect of acknowledgment in writing.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed ; but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

I of 1872.

*Explanation I.*—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay,

*(Part III.—Computation of Period of Limitation.)*

deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

*Explanation II.*—For the purposes of this section, “signed” means signed either personally or by an agent duly authorised in this behalf.

*Explanation III.*—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

Effect of  
payment  
on account  
of debt or of  
interest on  
legacy.

20. (1) <sup>1</sup>[Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made:]

<sup>2</sup>[Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.]

Effect of  
receipt of  
produce of  
mortgaged  
land.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

*Explanation.*—Debt includes money payable under a decree or order of Court.

Agent of  
person under  
disability

21. (1) The expression “agent duly authorised in this behalf,” in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

Acknowledg-  
ment or  
payment  
by one of  
several joint  
contractors,  
etc.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

<sup>3</sup>[(3) For the purposes of the said sections—

(a) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorised agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and

<sup>1</sup> Subs. by the Indian Limitation (Amendment) Act, 1942 (16 of 1942), s. 2, for the original words.

<sup>2</sup> Subs. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), s. 2, for original proviso.

<sup>3</sup> Ins. by s. 3, *ibid*.

(Part III.—*Computation of Period of Limitation.* Part IV.—*Acquisition of Ownership by Possession.*)

(b) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.]

22. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

Effect of substituting or adding new plaintiff or defendant.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

*Illustration.*

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

*Illustrations.*

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

## PART IV.

### ACQUISITION OF OWNERSHIP BY POSSESSION.

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

Acquisition of right to easements.



*(Part IV.—Acquisition of Ownership by Possession.)*

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to <sup>1</sup>[the Crown], that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

*Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

*Illustrations.*

- (a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890, to 1st January, 1910. The plaintiff is entitled to judgment.
- (b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that

<sup>1</sup> Subs. by the A. O. 1937 for "Govt.".

(Part IV.—Acquisition of Ownership by Possession. Part V.—Savings and Repeals.)

within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Extinguish-  
ment of  
right to  
property.

## PART V.

### SAVINGS AND REPEALS.

IX of 1872 29. <sup>1</sup>[(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872. Savings.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.]

IV of 1869. <sup>2</sup>[(3)] Nothing in this Act shall apply to suits under the Indian Divorce Act.

V of 1882. <sup>2</sup>[(4)] Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend.

30 & 31. [*Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877. Provision for suits by certain mortgagees in territories mentioned in the second schedule.*] *Rep. by the Repealing and Amending Act, 1930 (VIII of 1930), s. 3 and Sch. II.*

32. [*Repeals*] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

<sup>1</sup> Subs by the Indian Limitation (Amendment) Act, 1922 (10 of 1922), s. 3, for the original sub-section (1).

<sup>2</sup> The original sub-sections (2) and (3) were renumbered (3) and (4), *ibid*.

(The First Schedule.—First Division: Suits.)

## THE FIRST SCHEDULE.

(See section 3.)

## FIRST DIVISION: SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part I.—Thirty days.</i>	
1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.	Thirty days . .	When notice of the award is delivered to the plaintiff. XXIII of 1863.
	<i>Part II.—Ninety days.</i>	
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in [the Provinces].	Ninety days . .	When the act or omission takes place.
	<i>Part III.—Six months.</i>	
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months . .	When the dispossession occurs I of 1877.
2* * * * *	* * * *	* * * * *
	<sup>3</sup> [ <i>Part IV—One year.</i> ]	
5.—Under the summary procedure referred to in section 123 (2) (f) of the Code of Civil Procedure, 1908 <sup>3</sup> [where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code].	<sup>4</sup> [One year] . .	When the debt or liquidated demand becomes payable or when the property becomes recoverable. V of 1908
	5* * * *	
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year . . . .	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan or labourer <sup>7</sup> * * *.	<sup>6</sup> [One year] . .	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	<sup>6</sup> [One year] . .	When the food or drink is delivered.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".<sup>2</sup> Article 4 relating to suits under the Employers and Workmen (Disputes) Act, 1860, rep. by the Repealing and Amending Act, 1937 (20 of 1937), s. 3 and Sch. II.<sup>3</sup> Ins. by the Indian Limitation (Amendment) Act, 1925 (30 of 1925), s. 2.<sup>4</sup> Subs. by s. 2, *ibid.* for "six months".<sup>5</sup> The heading "*Part IV—One year*" rep. by s. 2, *ibid.*<sup>6</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. and Sch. I, for "Ditto".<sup>7</sup> The words and figure "not provided for by this schedule, article 4" rep. by the Repealing and Amending Act, 1939 (34 of 1939), s. 2 and Sch. I.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—contd.</i>	
9.—For the price of lodging	<sup>1</sup> [One year] ..	When the price becomes payable.
10.—To enforce a right of pre-emption whether the right is founded on law, or general usage, or on special contract.	<sup>1</sup> [One year] ..	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order ;	<sup>1</sup> [One year] ..	The date of the order
V of 1908.	(1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree ;	
XV of 1882.	(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.	
V of 1908.	11A —By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	<sup>1</sup> [One year] .. Ditto.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit	Period of limitation	Time from which period begins to run.
	<i>Part IV.—One year— contd.</i>	
12.—To set aside any of the following sales:—	<sup>1</sup> [One year] ..	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought
(a) sale in execution of a decree of a Civil Court ;		
(b) sale in pursuance of a decree or order of a Collector or other officer of revenue ;		
(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ;		
(d) sale of a patni taluq sold for current arrears of rent.		
<i>Explanation.</i> —In this article "patni" includes any intermediate tenure saleable for current arrears of rent.		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	<sup>1</sup> [One year] ..	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	<sup>1</sup> [One year] ..	The date of the act or order
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	<sup>1</sup> [One year] ..	When the attachment, lease or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	<sup>1</sup> [One year] ..	When the payment is made

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation	Time from which period begins to run
XII of 1855.	<i>Part IV.—One year— contd.</i>	
	1[One year] ..	The date of determining the amount of the compensation.
	1[One year] ..	The date of the refusal to complete.
	1[One year] ..	When the imprisonment ends.
XIII of 1855.	1[One year] ..	The date of the death of the person wronged.
	1[One year] ..	The date of the death of the person killed.
	1[One year] ..	When the injury is committed.
	1[One year] ..	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
	1[One year] ..	When the libel is published.
	1[One year] ..	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
	1[One year] ..	When the loss occurs
	1[One year] ..	The date of the breach.
	1[One year] ..	The date of the distress.
	1[One year] ..	The date of the distress.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I. for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part IV.—One year—concl'd.</i>		
29.—For compensation for wrongful seizure of moveable property under legal process.	<sup>1</sup> [One year] ..	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	<sup>1</sup> [One year] ..	When the loss or injury occurs.
31.—Against carrier for compensation for non-delivery of, or delay in delivering, goods.	<sup>1</sup> [One year] ..	When the goods ought to be delivered.
<i>Part V.—Two years.</i>		
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	<sup>1</sup> [Two years] ..	When the wrong complained of is done. XII of 1855.
34.—Under the same Act against an administrator.	<sup>1</sup> [Two years] ..	Ditto.
35.—Under the same Act against any other representative.	<sup>1</sup> [Two years] ..	Ditto.
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	<sup>1</sup> [Two years] ..	When the malfeasance, misfeasance or nonfeasance takes place.
<i>Part VI.—Three years.</i>		
37.—For compensation for obstructing a way or a watercourse.	Three years ...	The date of the obstruction.
38.—For compensation for diverting a watercourse.	<sup>1</sup> [Three years] ..	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	<sup>1</sup> [Three years] ..	The date of the trespass.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
XXXIX of 1925. 40.—For compensation for infringing copyright or any other exclusive privilege.	1[Three years] ...	The date of the infringement.
41.—To restrain waste . . .	1[Three years] ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained	1[Three years] ...	When the injunction ceases.
43.—Under the <sup>2</sup> [Indian Succession Act, 1925, section 360 or section 361,] to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	1[Three years] .	The date of the payment or distribution.
44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.	1[Three years] ...	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code:—	1[Three years] ...	The date of the final award or order in the case.
VII of 1822. The Bengal Land-revenue Settlement Regulation, 1822.		
XI of 1825. The Bengal Land-revenue Settlement Regulation, 1825.		
IX of 1833. The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.		
46.—By a party bound by such award to recover any property comprised therein.	1[Three years] ...	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, 1898, or the Mamlatdars' Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order.	1[Three years] . .	The date of the final order in the case.
V of 1898.		
Bom. II of 1906.		

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Subs. by the Repealing and Amending Act, 1930 (8 of 1930), s. 2 and Sch. 1, for "Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140".



(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
48.—For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	<sup>1</sup> [Three years] ..	When the person having the right to the possession of the property first learns in whose possession it is.
<sup>2</sup> [48A.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depository or pawnee for a valuable consideration.	Three years ..	When the sale becomes known to the plaintiff].
<sup>2</sup> [48B.—To set aside sale of moveable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years ..	When the sale becomes known to the plaintiff].
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	<sup>1</sup> [Three years] ..	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	<sup>1</sup> [Three years] ..	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	<sup>1</sup> [Three years] ..	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	<sup>1</sup> [Three years] ..	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	<sup>1</sup> [Three years] ..	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	<sup>1</sup> [Three years] ...	When the period of the proposed bill elapses.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".<sup>2</sup> Ins. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), s. 3.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	<sup>1</sup> [Three years] . .	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	<sup>1</sup> [Three years] ...	When the work is done.
57.—For money payable for money lent.	<sup>1</sup> [Three years] . .	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	<sup>1</sup> [Three years] . .	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	<sup>1</sup> [Three years] . .	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	<sup>1</sup> [Three years] . .	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	<sup>1</sup> [Three years] . .	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	<sup>1</sup> [Three years] . .	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	<sup>1</sup> [Three years] . .	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	<sup>1</sup> [Three years] . .	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid made payable at a future time, and then when that time arrives. <sup>2</sup>

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> For article 64A, applicable to the Bombay Province, see the Indian Limitation (Bombay Amendment) Act, 1937 (Bom. 6 of 1937), s. 2

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency	<sup>1</sup> [Three years] ..	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	<sup>1</sup> [Three years] .	The day so specified
67.—On a single bond, where no such day is specified.	<sup>1</sup> [Three years] .	The date of executing the bond
68.—On a bond subject to a condition.	<sup>1</sup> [Three years] .	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	<sup>1</sup> [Three years] ..	When the bill or note falls due
70.—On a bill of exchange payable at sight or after sight, but not at a fixed time.	<sup>1</sup> [Three years] .	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	<sup>1</sup> [Three years] ..	When the bill is presented at that place
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	<sup>1</sup> [Three years] .	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	<sup>1</sup> [Three years] ..	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	<sup>1</sup> [Three years] ..	The expiration of the first term of payment as to the part then payable ; and for the other parts the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	<sup>1</sup> [Three years] ..	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	<sup>1</sup> [Three years] .	The date of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given	<sup>1</sup> [Three years] ..	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	<sup>1</sup> [Three years] ..	The date of the refusal to accept.
79.—By the acceptor of an accommodation bill against the drawer.	<sup>1</sup> [Three years] ..	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	<sup>1</sup> [Three years] ..	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	<sup>1</sup> [Three years] ..	When the surety pays the creditor.
82.—By a surety against a co-surety.	<sup>1</sup> [Three years] ..	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify	<sup>1</sup> [Three years] ..	When the plaintiff is actually indemnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	<sup>1</sup> [Three years] ..	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	<sup>1</sup> [Three years] ..	The close of the year in which the last item admitted or proved is entered in the account ; such year to be computed as in the account.
86.— <sup>2</sup> [(a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	<sup>1</sup> [Three years] .	<sup>2</sup> [(a) The date of the death of the deceased.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Subs. by the Insurance Act, 1938 (4 of 1938), s. 122, as ins. by the Insurance (Amendment) Act, 1941 (13 of 1941), s. 68. The original s. 122 of Act 4 of 1938, amending article 86, was rep. by the Insurance (Amendment) Act, 1939 (11 of 1939), s. 34.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
86.— <i>contd.</i> (b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.]	<sup>1</sup> [Three years] ..	(b) The date of the occurrence causing the loss.]
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	<sup>1</sup> [Three years] ..	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	<sup>1</sup> [Three years] ..	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. Ditto.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	<sup>1</sup> [Three years] ..	
90.—Other suits by principals against agents for neglect or misconduct.	<sup>1</sup> [Three years] ..	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	<sup>1</sup> [Three years] ..	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	<sup>1</sup> [Three years] ..	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	<sup>1</sup> [Three years] ..	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	<sup>1</sup> [Three years] ..	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	<sup>1</sup> [Three years] ..	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	<sup>1</sup> [Three years] ..	When the mistake becomes known to the plaintiff.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I. for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*. FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
97.—For money paid upon an existing consideration which afterwards fails.	<sup>1</sup> [Three years] ..	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	<sup>1</sup> [Three years] ..	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	<sup>1</sup> [Three years] .	The date of the payment in excess of the plaintiff's own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	<sup>1</sup> [Three years] ...	When the right to contribution accrues.
101.—For a seaman's wages .	<sup>1</sup> [Three years] ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	<sup>1</sup> [Three years] ...	When the wages accrue due
103.—By a Muhammadan for exigible dower ( <i>mu' ajjal</i> ).	<sup>1</sup> [Three years] ...	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower ( <i>mu' wajjal</i> ).	<sup>1</sup> [Three years] ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	<sup>1</sup> [Three years] ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	<sup>1</sup> [Three years] ..	The date of the dissolution.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. 1, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	1[Three years] ..	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	1[Three years] ..	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	1[Three years] ...	When the profits are received.
110.—For arrears of rent	1[Three years] ..	When the arrears become due.
111.—By a vendor of immovable property for personal payment of unpaid purchase-money.	1[Three years] ..	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	1[Three years] ..	When the call is payable.
113.—For specific performance of a contract.	1[Three years] ..	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	1[Three years] ..	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not here-in specially provided for.	1[Three years] ..	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
V of 1908.	<i>Part VII.—Six years.</i>	
	116.—For compensation for the breach of a contract in writing registered.	Six years . . . When the period of limitation would begin to run against a suit brought on a similar contract not registered.
	117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	The date of the judgment.
	118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	1[Six years] . . . When the alleged adoption becomes known to the plaintiff.
	119.—To obtain a declaration that an adoption is valid.	1[Six years] . . . When the rights of the adopted son, as such, are interfered with.
	120.—Suit for which no period of limitation is provided elsewhere in this schedule.	1[Six years] . . . When the right to sue accrues.
	<i>Part VIII.—Twelve years.</i>	
	121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	Twelve years . . . When the sale becomes final and conclusive.
	122.—Upon a judgment obtained in <sup>2</sup> [the Provinces], or a recognisance.	1[Twelve years] . . . The date of the judgment or recognisance.
	123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	1[Twelve years] . . . When the legacy or share becomes payable or deliverable.
	124.—For possession of an hereditary office.	1[Twelve years] ... Where the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
	125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or	1[Twelve years] ... The date of the alienation.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Subs. by the A. O. 1948 for "British India".



(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.—Twelve years—contd.</i>	
Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.		
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	<sup>1</sup> [Twelve years] ...	When the alienee takes possession of the property.
127.—By a person excluded from joint family property to enforce a right to share therein.	<sup>1</sup> [Twelve years] ...	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	<sup>1</sup> [Twelve years] ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	<sup>1</sup> [Twelve years] ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	<sup>1</sup> [Twelve years] ...	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	<sup>1</sup> [Twelve years] ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	<sup>1</sup> [Twelve years] ...	When the money sued for becomes due.
<sup>2</sup> [ <i>Explanation.</i> —For the purposes of this article— (a) the allowance and fees respectively called <i>mali-hana</i> and <i>haqq</i> s, and (b) the value of any agricultural or other produce the right to receive which is secured by a charge upon immoveable property, <sup>3</sup> [and (c) advances secured by mortgage by deposit of title-deeds] shall be deemed to be money charged upon immoveable property.]		
<sup>4</sup> *	* *	* * *

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".<sup>2</sup> Subs. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), s. 4, for the original explanation.<sup>3</sup> Ins. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 9.<sup>4</sup> Article 133 rep. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), s. 3.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VIII.—Twelve years—contd.</i>		
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	<sup>1</sup> [Twelve years] ...	<sup>2</sup> [When the transfer becomes known to the plaintiff.]
<sup>3</sup> [134-A.—To set aside a transfer of immoveable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years ..	When the transfer becomes known to the plaintiff.
134-B.—By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years ...	The death, resignation or removal of the transferor.
134-C.—By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of moveable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.	Twelve years ...	The death, resignation or removal of the seller.]
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	<sup>1</sup> [Twelve years] ..	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	<sup>1</sup> [Twelve years] ..	When the vendor is first entitled to possession.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Subs. by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), s. 3, for "the date of the transfer".

<sup>3</sup> Articles 134-A, 134-B and 134-C were ins. by s. 3, *ibid.*

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*Contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VIII.—Twelve years—concl'd.</i>		
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	<sup>1</sup> [Twelve years] ..	When the judgment-debtor is first entitled to possession.
138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	<sup>1</sup> [Twelve years]	The date when the sale becomes absolute.
139.—By a landlord to recover possession from a tenant.	<sup>1</sup> [Twelve years] .	When the tenancy is determined.
140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	<sup>1</sup> [Twelve years] ..	When his estate falls into possession.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	<sup>1</sup> [Twelve years] .	When the female dies
142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	<sup>1</sup> [Twelve years] ..	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	<sup>1</sup> [Twelve years] ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	<sup>1</sup> [Twelve years] ...	When the possession of the defendant becomes adverse to the plaintiff.
<i>Part IX.—Thirty years.</i>		
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	<sup>1</sup> [Thirty years] ...	When any part of the principal or interest was last paid on account of the mortgage-debt.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*concl'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IX.—Thirty years—concl'd.</i>	
146-A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	<sup>1</sup> [Thirty years] ...	The date of the dispossession or discontinuance.
	<i>Part X.—Sixty years.</i>	
147.—By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	<sup>1</sup> [Sixty years] ...	When the right to redeem or to recover possession accrues: Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of <sup>2</sup> * * * <sup>3</sup> [ <sup>4</sup> * * *], the Central Provincial Government or any Provincial Government] <sup>5</sup> [except a suit before the Federal Court in the exercise of its original jurisdiction].	<sup>1</sup> [Sixty years] ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> The words "the Secretary of State for India in Council" rep. by the A. O. 1948.

<sup>3</sup> Ins. by the A. O. 1937.

<sup>4</sup> The words "the Secretary of State, the Crown Representative" rep. by the A. O. 1948.

<sup>5</sup> Ins. by the Indian Limitation (Amendment) Act, 1937 (14 of 1937), s. 2.

(The First Schedule.— Second Division : Appeals.)

THE FIRST SCHEDULE—*contd.*

## SECOND DIVISION : APPEALS

Description of appeal.	Period of limitation.	Time from which period begins to run.	
150.—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session <sup>1</sup> [or by a High Court in the exercise of its original criminal jurisdiction].	Seven days ...	The date of the sentence.	V of 1898.
<sup>2</sup> [150-A.—Under the Code of Criminal Procedure, 1898, from a finding rejecting a claim under section 443 of that Code.	Seven days ...	The date of the finding.]	V of 1898.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, <sup>3</sup> [Madras] <sup>4</sup> [and Bombay, or of the High Court of East Punjab]] in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.	
152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed from.	V of 1908.
153.—Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	<sup>5</sup> [Thirty days] ...	The date of the order.	
154.—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	<sup>5</sup> [Thirty days] ..	The date of the sentence or order appealed from.	V of 1898.
155.—Under the same Code to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days ...	The date of the sentence or order appealed from.	
156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days ...	The date of the decree or order appealed from.	V of 1908.
157.—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months ...	The date of the order appealed from.	V of 1898.

<sup>1</sup> Ins. by the Criminal Procedure Amendment Act, 1943 (26 of 1943), s. 8.<sup>2</sup> Ins. by the Criminal Law Amendment Act, 1923 (12 of 1923), s. 42.<sup>3</sup> The words "Madras, Bombay, Lahore and Rangoon" had been subs. by the Repealing and Amending Act, 1930 (8 of 1930), s. 2 and Sch. I, for "Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma", and the words "and Lahore" were subs. by the A. O. 1937 for "Lahore and Rangoon".<sup>4</sup> Subs. by the A. O. 1948 for "Bombay and Lahore".<sup>5</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*

## THIRD DIVISION : APPLICATIONS

	Description of application.	Period of limitation	Time from which period begins to run.
X of 1940.	<sup>1</sup> [158.—Under the Arbitration Act, 1940, to set aside an award or to get an award remitted for reconsideration.	Thirty days ...	The date of service of the notice of filing of the award.]
V of 1908.	159.—For leave to appear and defend a suit under summary procedure referred to in section 128 (2) (f) <sup>3</sup> [or under Order XXXVII] of the <sup>4</sup> [Code of Civil Procedure, 1908]	<sup>2</sup> [Ten days] ..	When the summons is served.
	160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days ..	When the application for review is rejected.
	161.—For a review of judgment by a <sup>5</sup> * Court of Small Causes <sup>6</sup> [(other than a Presidency Small Cause Court)] or by a Court invested with the jurisdiction of a <sup>5</sup> * Court of Small Causes when exercising that jurisdiction.	<sup>2</sup> [Fifteen days] ..	The date of the decree or order.
	162.—For a review of judgment by any of <sup>7</sup> [the following Courts, namely,] the High Courts of Judicature at Fort William, Madras, <sup>8</sup> [Bombay and Nagpur and the High Court of East Punjab] in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.

<sup>1</sup> Subs. by the Arbitration Act, 1940 (10 of 1940), s. 49 (2) and Sch. IV, for the original entry, as amended by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. I.

<sup>2</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>3</sup> Ins. by the Indian Limitation (Amendment) Act, 1925 (30 of 1925), s. 3.

<sup>4</sup> Subs. by the Arbitration Act, 1940 (10 of 1940), s. 49 (2) and Sch. IV, for "same Code".

<sup>5</sup> The word "Provincial" rep. by the Berar Laws Act, 1941 (4 of 1941), s. 2 and Sch. III.

<sup>6</sup> Ins. by s. 2 and Sch. III, *ibid.*

<sup>7</sup> Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

<sup>8</sup> The original words were "and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma". The Sind Courts (Supplementary) Act, 1926 (34 of 1926) which was to come into force on the commencement of the Sind Courts Act, 1926 (Bom. 7 of 1926), directed the insertion of the words "or the Chief Court of Sind" after the word "Bombay". Though this amendment has not

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days . .	The date of the dismissal.
164.—By a defendant, for an order to set aside a decree passed <i>ex parte</i> .	<sup>1</sup> [Thirty days] ...	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.
165.—Under the Code of Civil Procedure, 1908, by a person dispossessed of immoveable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	<sup>1</sup> [Thirty days] ...	The date of the dispossession. V of 1908.
166.—Under the same Code to set aside a sale in execution of a decree <sup>2</sup> [including any such application by a judgment-debtor].	<sup>1</sup> [Thirty days] ...	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	<sup>1</sup> [Thirty days] . .	The date of the resistance or obstruction.
168.—For the readmission of an appeal dismissed for want of prosecution.	<sup>1</sup> [Thirty days] ...	The date of the dismissal.
169.—For the re-hearing of an appeal heard <i>ex parte</i> .	<sup>1</sup> [Thirty days] ...	The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	<sup>1</sup> [Thirty days] ...	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Sixty days ...	The date of the abatement. V of 1908.

come into force the words "Bombay, Lahore and Rangoon and the Chief Court of Sind" were subs. for the words "and Bombay or the Chief Court of Sind or the Chief Court of the Punjab or the Chief Court of Lower Burma" by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I. For the words "Lahore and Rangoon", the words "Lahore, Rangoon and Nagpur" were subs. by the C. P. Courts (Supplementary) Act, 1935 (8 of 1935), s. 2 and Sch., and the word "Rangoon" was rep. by the A. O. 1937. The word "Lahore" was rep., and the words "High Court of East Punjab" were subs. for "Chief Court of Sind", by the A. O. 1948.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Ins. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), s. 4.

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	<sup>1</sup> [Sixty days] ...	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162	Ninety days ...	The date of the decree or order.
174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	<sup>1</sup> [Ninety days] ...	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	<sup>2</sup> [Ninety days] ...	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	<sup>1</sup> [Ninety days] ..	The date of the death of the deceased defendant or respondent.
X of 1940.	<sup>3</sup> [178.—Under the Arbitration Act, 1940, for the filing in Court of an award.	Ninety days ...
V of 1908.	179.—By a person desiring to appeal under the <sup>4</sup> [Code of Civil Procedure, 1908,] to <sup>5</sup> [His Majesty Council] for leave to appeal.	<sup>2</sup> [Ninety days] ...
	180.—By a purchaser of immoveable property at a sale in execution of a decree for delivery of possession.	Three years ...
		When the sale becomes absolute.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Subs. by the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (26 of 1920), s. 2, for "Ditto".

<sup>3</sup> Subs. by the Arbitration Act, 1940 (10 of 1940), s. 49 (2) and Sch. IV, for the original article, as amended by Act 26 of 1920, s. 2.

<sup>4</sup> Subs. by Act 10 of 1940, s. 49 (2) and Sch. IV, for "same code".

<sup>5</sup> The words are now to be read and construed as if the references was to the Federal Court,—*vide* the Federal Court Entanglement of Jurisdiction Act, 1947 (1 of 1948), s. 6.



(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
181.—Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	<sup>1</sup> [Three years] ...	When the right to apply accrues.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years ; or, where a certified copy of the decree or order has been registered six years.	<p>1. The date of the decree or V of 1908. order, or</p> <p>2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or</p> <p>3. (where there has been a review of judgment) the date of the decision passed on the review, or</p> <p>4. (where the decree has been amended) the date of amendment, or</p> <p>5. (where the application next hereinafter mentioned has been made) the date of <sup>2</sup>[the final order passed on an application made] in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or</p> <p>6. <sup>3</sup>[(In respect of any amount, recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last-mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal], or</p> <p>7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.</p>

<sup>1</sup> Subs. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I, for "Ditto".

<sup>2</sup> Subs. by the Indian Limitation (Second Amendment) Act, 1927 (9 of 1927) s. 2 for "applying".

<sup>3</sup> Subs. by s. 2 *ibid.*, for the original clause 6.

## (The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

V of 1908.

Description of application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908— <i>contd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years— <i>contd.</i>	<p><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—"Proper Court" means the Court whose duty it is to execute the decree or order.</p>
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years ...	<p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right:</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknow-</p>

## Criminal Law Amendment

[1908 : Act XIV.

(The First Schedule.—Third Division : Applications. The Second Schedule.  
The Third Schedule.)

THE FIRST SCHEDULE—*concl'd.*THIRD DIVISION : APPLICATIONS—*concl'd.*

Description of application	Period of limitation	Time from which period begins to run.
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council— <i>cont'd</i>	Twelve years— <i>cont'd</i>	ledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.

THE SECOND SCHEDULE.—[Territories referred to in section 31] *Rep. by the Repealing and Amending Act, 1930 (VIII of 1930), s. 3 and Sch. II.*

THE THIRD SCHEDULE.—[Enactments repealed.] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

## THE INDIAN CRIMINAL LAW AMENDMENT ACT, 1908.

ACT No. XIV OF 1908.<sup>1</sup>

[11th December, 1908.]

An act to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace : It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Criminal Law Amendment Act, 1908.

(2) It extends to the Provinces of <sup>2</sup>[West Bengal] and Assam ; but the <sup>3</sup>[Provincial Government of any other Province] may, at any time, by

Short title  
and extent.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. IV, p. 203, and for Proceedings in Council, see *ibid*, Pt. VI, p. 158.

<sup>2</sup> Subs. by the A. O. 1948 for "Bengal and of Eastern Bengal".

<sup>3</sup> The words "L. G. of any other Province" had been subs. for "G. G. in C." by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, and the words "Provincial Govt." were subs. for "L. G." by the A. O. 1937.

(Part I.—*Special Procedure.* II.—*Unlawful Associations.*)

<sup>1</sup>notification in the <sup>2</sup>[Official Gazette], extend the whole or any Part thereof to <sup>3</sup>[that Province].

\* \* \* \* \*

PART I.—[*Special Procedure.*] *Rep. by the Indian Criminal Law Amendment Repealing Act, 1922 (V of 1922), s. 3.*

## PART II.

## UNLAWFUL ASSOCIATIONS.

15. In this Part—

Definitions.

(1) “association” means any combination or body of persons whether the same be known by any distinctive name or not ; and

(2) “unlawful association” means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the <sup>5</sup>[Provincial Government] under the powers hereby conferred.

16. <sup>6</sup>[(1)] If the <sup>5</sup>[Provincial Government] is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the <sup>5</sup>[Provincial Government] may, Power to declare association unlawful.

<sup>1</sup> The Act has been extended under this provision to—

Bombay Presidency, *see* Gazette of India, Extraordinary, dated 4th January, 1910 ;

Madras Presidency, the U. P., the Punjab, and the C. P. , *see* *ibid* , dated 13th January, 1910 and *ibid* , 1910, Pt. I, p. 95 ;

Punjab, *see* Punjab Gazette Extraordinary, dated 23rd June, 1930 ;

The Province of Delhi, *see* Gazette of India, Extraordinary, dated 9th December, 1920 ;

Ajmer-Merwara, *see* Gazette of India, 1930, Pt II-A, p. 515 ;

Coorg, *see* Coorg Gazette Extraordinary, dated 11th January, 1932

It has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has also been declared to be in force in the Sonthal Parganas by notification under the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3(3)(a), *see* Calcutta Gazette, 1909, Pt I, p. 649 ; in the Khondmals District by the Khondmals Laws Regulation, 1946 (4 of 1936), s. 3 and Sch ; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

<sup>2</sup> Subs by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for “Gazette of India”.

<sup>3</sup> Subs by s. 2 and Sch. I, *ibid* , for “any other Province”.

<sup>4</sup> Sub-section (3) rep by the Indian Criminal Law Amendment Repealing Act, 1922 (5 of 1922), s. 3

<sup>5</sup> Subs by the A. O. 1937 for “L. G.” which had been subs by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for “G. G. in C.”

<sup>6</sup> The original s. 16 was renumbered as sub-section (1) of that section by the Criminal Law Amendment Act, 1932 (23 of 1932), s. 11.

## (Part II.—Unlawful Association.)

by notification in the Official Gazette, declare such association to be unlawful.

1\*                      \*                      \*                      \*                      \*                      \*

## Penalties.

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

<sup>2</sup>[(3) An offence under sub-section (1) shall be cognizable by the police, and notwithstanding anything contained in the Code of Criminal Procedure, 1898, shall be non-bailable.]

V of 1898.

Power to  
notify and  
take possession of places  
used for the  
purposes of  
an unlawful  
association.

<sup>3</sup>[17A. (1) The <sup>4</sup>[Provincial Government] may, by notification in the <sup>5</sup>[Official Gazette], notify any place which in its opinion is used for the purposes of an unlawful association.

*Explanation.*—For the purposes of this section “ place ” includes a house or building, or part thereof, or a tent or vessel.

(2) The District Magistrate or in a Presidency-town the Commissioner of Police, or any officer authorised in this behalf in writing by the District Magistrate or Commissioner of Police, as the case may be, may thereupon take possession of the notified place and evict therefrom any person found therein, and shall forthwith make a report of the taking possession to the <sup>4</sup>[Provincial Government] :

Provided that where such place contains any apartment occupied by women or children, reasonable time and facilities shall be afforded for their withdrawal with the least possible inconvenience.

(3) A notified place whereof possession is taken under sub-section (2) shall be deemed to remain in the possession of Government so long as the notification under sub-section (1) in respect thereof remains in force.

<sup>1</sup> Sub-section (2), ins. by s. 11 of the Criminal Law Amendment Act, 1932 (23 of 1932), was rep. by the A. O. 1937.

<sup>2</sup> Ins. by Act 23 of 1932, s. 12.

<sup>3</sup> Ss. 17A to 17F ins. by s. 13, *ibid.*

<sup>4</sup> Subs. by the A. O. 1937 for “ L. G. ”.

<sup>5</sup> Subs. by the A. O. 1937 for “ local official Gazette ”.

*(Part II.—Unlawful Associations.)*

17B. (1) The District Magistrate, Commissioner of Police or officer taking possession of a notified place shall also take possession of all moveable property found therein, and shall make a list thereof in the presence of two respectable witnesses.

Moveable  
property  
found in a  
notified place.

(2) If, in the opinion of the District Magistrate, or in a Presidency-town the Commissioner of Police, any articles specified in the list are or may be used for the purposes of the unlawful association, he may proceed subject to the provisions hereafter contained in this section to order such articles to be forfeited to His Majesty.

(3) All other articles specified in the list shall be delivered to the person whom he considers to be entitled to possession thereof, or, if no such person is found, shall be disposed of in such manner as the District Magistrate or Commissioner of Police, as the case may be, may direct.

V of 1898.

(4) The District Magistrate or Commissioner of Police shall publish, as nearly as may be in the manner provided in section 87 of the Code of Criminal Procedure, 1898, for the publication of a proclamation, a notice specifying the articles which it is proposed to forfeit and calling upon any person claiming that any article is not liable to forfeiture to submit in writing within fifteen days any representation he desires to make against the forfeiture of the article.

(5) Where any such representation is accepted by the District Magistrate or Commissioner of Police, he shall deal with the article concerned in accordance with the provisions of sub-section (3).

(6) Where any such representation is rejected, the representation, with the decision thereon, shall be forwarded to the District Judge, in the case of a decision by a District Magistrate, or, to the Chief Judge of the Small Cause Court, in the case of a decision by the Commissioner of Police, and no order of forfeiture shall be made until the District Judge or Chief Judge of the Small Cause Court, as the case may be, has adjudicated upon the representation. Where the decision is not confirmed the articles shall be dealt with in accordance with the provisions of sub-section (3).

V of 1908.

(7) In making an adjudication under sub-section (6) the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims so far as it can be made to apply, and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final.

(8) If the article seized is livestock or is of a perishable nature, the District Magistrate or Commissioner of Police may, if he thinks it expedient, order the immediate sale thereof, and the proceeds of the sale shall be disposed of in the manner herein provided for the disposal of other articles.

## (Part II.—Unlawful Associations.)

17C. Any person who enters or remains upon a notified place without the permission of the District Magistrate, or of an officer authorised by him in this behalf, shall be deemed to commit criminal trespass. Trespass upon notified places.

17D. Before a notification under sub-section (1) of section 17A is cancelled, the <sup>1</sup>[Provincial Government] shall give such general or special directions as it may deem requisite regulating the relinquishment by Government of possession of notified places. The relinquishment of property.

17E. (1) Where the <sup>1</sup>[Provincial Government] is satisfied, after such inquiry as it may think fit, that any monies, securities or credits are being used or are intended to be used for the purposes of an unlawful association, the <sup>1</sup>[Provincial Government] may, by order in writing, declare such monies, securities or credits to be forfeited to His Majesty. Power to forfeit funds of an unlawful association.

(2) A copy of an order under sub-section (1) may be served on the person having custody of the monies, securities or credits, and on the service of such copy such person shall pay or deliver the monies, securities or credits to the order of the <sup>1</sup>[Provincial Government] :

Provided that, in the case of monies or securities, a copy of the order may be endorsed for execution to such officer as the <sup>1</sup>[Provincial Government] may select, and such officer shall have power to enter upon and search for such monies and securities in any premises where they may reasonably be suspected to be, and to seize the same.

(3) Before an order of forfeiture is made under sub-section (1) the <sup>1</sup>[Provincial Government] shall give written notice to the person (if any) in whose custody the monies, securities or credits are found of its intention to forfeit, and any person aggrieved thereby may within fifteen days from the issue of such notice file an application to the District Judge in a District, or to the Chief Judge of the Small Cause Court in a Presidency-town, to establish that the monies, securities or credits or any of them are not liable to forfeiture, and if any such application is made, no order of forfeiture shall be passed in respect of the monies, securities or credits concerned until such application has been disposed of, and unless the District Judge or Chief Judge of the Small Cause Court has decided that the monies, securities or credits are liable to forfeiture.

(4) In disposing of an application under sub-section (3) the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims so far as it can be made to apply, and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final.

(5) Where the <sup>1</sup>[Provincial Government] has reason to believe that any person has custody of any monies, securities or credits which are being used or are intended to be used for the purposes of an unlawful association,

<sup>1</sup> Subs. by the A. O. 1937 for "L. G."

*(Part II.—Unlawful Associations.)*

the <sup>1</sup>[Provincial Government] may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with the same, save in accordance with the written orders of the <sup>1</sup>[Provincial Government]. A copy of such order shall be served upon the person to whom it is directed.

(6) The <sup>1</sup>[Provincial Government] may endorse a copy of an order under <sup>2</sup>[sub-section (5)] for investigation to any officer it may select, and such copy shall be warrant whereunder such officer may enter upon any premises of the person to whom the order is directed, examine the books of such person, search for monies and securities, and make inquiries from such person, or any officer, agent or servant of such person, touching the origin of and dealings in any monies, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purposes of an unlawful association.

V of 1898.

(7) A copy of an order under this section may be served in the manner provided in the Code of Criminal Procedure, 1898, for the service of a summons, or, where the person to be served is a corporation, company, bank or association of persons, it may be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or association at its registered office, or, where there is no registered office, at the place where it carries on business.

(8) Where an order of forfeiture is made under sub-section (1) in respect of any monies, securities or credits in respect of which a prohibitory order has been made under <sup>2</sup>[sub-section (5)], such order of forfeiture shall have effect from the date of the prohibitory order, and the person to whom the prohibitory order was directed shall pay or deliver the whole of the monies, securities, or credits forfeited, to the order of the <sup>1</sup>[Provincial Government].

(9) Where any person liable under this section to pay or deliver any monies, securities, or credits to the order of the <sup>1</sup>[Provincial Government] refuses or fails to comply with any direction of the <sup>1</sup>[Provincial Government] in this behalf, the <sup>1</sup>[Provincial Government] may recover from such person, as arrears of land-revenue or as a fine, the amount of such monies or credits or the market value of such securities.

(10) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money; and the market value of any security means the value as fixed by any officer or person deputed by the <sup>1</sup>[Provincial Government] in this behalf.

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Subs. by the Repealing and Amending Act, 1934 (24 of 1934), s. 2 and Sch. I, for "sub-section (3)".



## Ports.

[1908 : Act XV.

## (Part II.—Unlawful Associations.)

(11) Except so far as is necessary for the purposes of any proceeding under this section, no information obtained in the course of any investigation made under sub-section (6) shall be divulged by any officer of Government, without the consent of the <sup>1</sup>[Provincial Government].

Jurisdiction  
barred.

17F. Every report of the taking possession of property and every declaration of forfeiture made, or purporting to be made, under this Act, shall, as against all persons, be conclusive proof that the property specified therein has been taken possession of by Government or has been forfeited, as the case may be, and save as provided in sections 17B and 17E no proceeding purporting to be taken under section 17A, 17B, 17C, 17D or 17E shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said sections or against Government or any person acting on behalf of or by authority of Government for any loss or damage caused to or in respect of any property whereof possession has been taken by Government under this Act.]

Continuance  
of association.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

*The Schedule.—Rep. by the Indian Criminal Law Amendment Repealing Act, 1922 (V of 1922), s. 3.*

## THE INDIAN PORTS ACT, 1908.

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ACT No. XV OF 1908.<sup>1</sup>

18th December, 1908.]

An Act to consolidate the Enactments relating to Ports and Port-charges.

WHEREAS it is expedient to consolidate the enactments relating to ports and port-charges; It is hereby enacted as follows:—

## CHAPTER I.

## PRÉLIMINARY.

1. (1) This Act may be called the Indian Ports Act, 1908.

Title and  
extent.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 309; for Report of Select Committee, see *ibid.*, 1908, Pt. V, p. 359; and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, pp. 146, 154 and 182.

This Act has been amended in its application to the port of Cochin by the Cochin Port Act, 1936 (6 of 1936), s. 2 and Sch.

## (Chapter I.—Preliminary.)

(2) It shall extend, save as otherwise appears from its subject or context,—

(a) to the ports mentioned in the first schedule, and to such parts of the navigable rivers and channels leading to such ports respectively as have been declared to be subject to Act XXII of 1855 (*for the Regulation of Ports and Port-dues*) or <sup>XII of 1875.</sup> to the Indian Ports Act, 1875, or to the Indian Ports Act, <sup>X of 1889.</sup> 1889 ;

(b) to the other ports or parts of navigable rivers or channels to which the <sup>1</sup>[Government], in exercise of the power hereinafter conferred, extends this Act.

(3) But nothing in section 31 or section 32 shall apply to any port, river or channel to which the section has not been specially extended by the <sup>1</sup>[Government].

## Savings.

## 2. Nothing in this Act shall—

- (i) apply to any vessel belonging to, or in the service of, His Majesty <sup>2</sup>\* \* \* \*, or to any vessel of war belonging to any Foreign Prince or State, or
- (ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or
- (iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto.

## Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Magistrate” means a person exercising powers under the Code of Criminal Procedure, 1898, not less than those of a Magistrate of the <sup>V of 1898.</sup> second class, and includes, in the towns of Calcutta, Madras and Bombay, a Presidency Magistrate:

(2) “master”, when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel:

(3) “pilot” means a person for the time being authorized by the <sup>1</sup>[Government] to pilot vessels:

(4) “port” includes also any part of a river or channel in which this Act is for the time being in force:

(5) “port-officer” is synonymous with master-attendant:

<sup>1</sup> Subs. by the A. O. 1937 for “L. G.”.

<sup>2</sup> The words “or the G. of I.” rep. by the A. O. 1937.

(Chapter I.—Preliminary. Chapter II.—Powers of the Government.)

(6) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships: and

(7) "vessel" includes anything made for the conveyance by water of human beings or of property:

<sup>1</sup>[(8) "major port" means any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port:

(9) "Government", as respects major ports, for all purposes, and, as respects other ports, for the purposes of making rules under clause (p) of section 6 (1) and of the appointment and control of port health-officers under section 17, means the Central Government, and save as aforesaid means the Provincial Government.]

## CHAPTER II.

### POWERS OF THE <sup>2</sup>[GOVERNMENT].

4. (1) <sup>3</sup>\* \* \* \* The <sup>2</sup>[Government] may, by notification in the <sup>4</sup>[Official Gazette],—

Power to extend or withdraw the Act or certain portions thereof.

(a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force ;

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended ;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether within or without high-water mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

<sup>1</sup> Ins. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> The words "With the previous sanction of the G. G. in C." rep by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s. 2.

<sup>4</sup> Subs. by the A. O. 1937 for "local official Gazette".

*(Chapter II.—Powers of the Government.)*

Alteration of  
limits of  
ports.

5. (1) The <sup>1</sup>[Government] may, <sup>2</sup>\* \* \* subject to any rights of private property, alter the limits of any port in which this Act is in force.

(2) When the <sup>1</sup>[Government] alters the limits of a port under subsection (1), it shall declare or describe, by notification in the <sup>3</sup>[Official Gazette], and by such other means, if any, as it thinks fit, the precise extent of such limits.

Power to  
make port-  
rules.

6. (1) The <sup>1</sup>[Government] may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely :—

- (a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act ;
- (b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port ;
- (c) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking-in davits, boats and other things projecting from such vessels ;
- (d) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port ;
- (e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged ;
- <sup>4</sup>[(ee) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same ;]
- <sup>5</sup>[(eee) for regulating the bunkering of vessels with liquid fuel in any such port and the description of barges, pipe lines or tank vehicles to be employed in such bunkering ;]

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> The words " with the previous sanction of the G. G. in C. and " rep. by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s. 3.

<sup>3</sup> Subs. by the A. O. 1937 for " local official Gazette ".

<sup>4</sup> Ins. by the Indian Ports (Amendment) Act, 1923 (39 of 1923), s. 2.

<sup>5</sup> Ins. by the Indian Ports (Amendment) Act, 1925 (5 of 1925), s. 2.

*(Chapter II.—Powers of the Government.)*

- (f) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free ;
- (g) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port ;
- (h) for regulating the moving and warping of all vessels within any such port and the use of warps therein ;
- (i) for regulating the use of the mooring buoys, chains and other moorings in any such port ;
- (j) for fixing the rates to be paid for the use of such moorings when belonging to the <sup>1</sup>[Crown], or of any boat, hawser or other thing belonging to the <sup>1</sup>[Crown] ;
- <sup>2</sup>[(j)] for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the <sup>1</sup>[Crown], and for fixing the rates to be paid for the use of the same ;]
- (k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port <sup>3</sup>[and for licensing and regulating the crews of any such vessels] and for determining the quantity of cargo or number of passengers <sup>3</sup>[or of the crew] to be carried by any such vessels <sup>3</sup>[and may by such rules provide for the fees payable in respect of any such license, and in the case of passenger vessels plying for hire, for the rates of hire to be charged and the conditions under which such vessels shall be compelled to ply for hire, and further for the conditions under which any license may be revoked] ;
- (l) for regulating the use of fires and lights within any such port ;
- (m) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port ;
- (n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port ;
- (o) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port ;

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<sup>1</sup> Subs. by the A. O. 1937 for "Govt."

<sup>2</sup> Ins. by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s. 4 (1).

<sup>3</sup> Ins. by s. 4 (2), *ibid.*



*(Chapter II.—Powers of the Government)*

- <sup>1</sup>[(p) <sup>2\*</sup> \* \* \* for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port, and in particular and without prejudice to the generality of this provision, for—
- (i) the signals to be hoisted and the places of anchorage to be taken up by such vessels having any case, or suspected case, of any infectious or contagious disease on board, or arriving at such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any infectious or contagious disease ;
  - (ii) the medical inspection of such vessels and of persons on board such vessels ;
  - (iii) the questions to be answered and the information to be supplied by masters, pilots and other persons on board such vessels ;
  - (iv) the detention of such vessels and of persons on board such vessels ;
  - (v) the duties to be performed in cases of any such disease by masters, pilots and other persons on board such vessels ;
  - (vi) the removal to hospital or other place approved by the health-officer and the detention therein of any person from any such vessel who is suffering or suspected to be suffering from any such disease ;
  - (vii) the cleansing, ventilation and disinfection of such vessels or any part thereof and of any articles therein likely to retain infection or contagion, and the destruction of rats or other vermin in such vessels ; and
  - (viii) the disposal of the dead on such vessels ; and]
  - (q) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—
  - (i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew ;

<sup>1</sup> Subs. by the Indian Ports (Amendment) Act, 1911 (4 of 1911), s. 2, for the original cl. (p).

<sup>2</sup> The words " subject to the control of the G. G. in C." rep. by the A. O. 1937.

(Chapter II.—Powers of the Government. Chapter III.—Port-officials and their Powers and Duties.)

- (ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew ;
- (iii) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew ;
- (iv) when the quarters used by the crew and the galley are separated by an iron bulk-head only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

1\*            \*            \*            \*            \*            \*

(2) The power to make rules under sub-section (1) <sup>2\*</sup> \* \* is subject to the condition of the rules being made after previous publication :

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of the Indian Ports Act, 1889, and continued by section 2, sub-section (2), of that Act.

K of 1889

(3) If any person disobeys any rule made under clause (p) of sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(4) If a master fails wholly or in part to do any act prescribed by any rule made under clause (p) of sub-section (1), the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

### CHAPTER III.

#### PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

7. (1) The <sup>3</sup>[Government] shall appoint some officer or body of persons to be conservator of every port subject to this Act. Appointment  
of conserva-  
tor.

(2) Subject to any direction by the <sup>3</sup>[Government] to the contrary,—

(a) in ports where there is a port-officer, the port-officer shall be the conservator :

<sup>1</sup> Sub-section (1A), ins by the Indian Ports (Amendment) Act, 1922 (15 of 1922), s. 2, and amended by the A. O 1937 and the Indian Ports (Amendment) Act, 1931 (11 of 1931), s. 2, was rep. by the Employment of Children Act, 1938 (26 of 1938), s. 8.

<sup>2</sup> The words "and sub-section (1A)", ins by Act 15 of 1922, s. 2, were rep. by Act 26 of 1938, s. 8.

<sup>3</sup> Subs. by the A. O 1937 for "L. G."

*(Chapter III.—Port-officials and their Powers and Duties.)*

(b) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

(3) Where the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the <sup>1</sup>[Government], or of any intermediate authority which <sup>2</sup>[the Government] may appoint.

Power of conservator to give and enforce directions for certain specified purposes.

8. (1) The conservator of any port subject to this Act may, with respect to any vessel within the port give directions for carrying into effect any rule for the time being in force therein under section 6.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

Power to cut warps and ropes.

9. The conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

Removal of obstructions within limits of port.

10. (1) The conservator may remove, or cause to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment; or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Subs. by the A. O. 1937 for "that Govt.".

*(Chapter III.—Port-officials and their Powers and Duties.)*

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

11. If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the <sup>1</sup>[Official Gazette] or in such other manner as the <sup>2</sup>[Government] by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction ;

Recovery of  
expenses of  
removal.

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same ;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the <sup>2</sup>[Government] directs ;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

12. (1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the conservator shall report the same for the information of the <sup>2</sup>[Government], and shall, with the sanction of <sup>3</sup>[the Government], cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

Removal of  
lawful  
obstructions.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

13. (1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the <sup>2</sup>[Government] in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator ;

Fouling of  
Government  
moorings.

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

<sup>1</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> Subs. by the A. O. 1937 for "that Government".

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and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(2) Any master or other person offending against the provisions of this section shall, for every such offence, be punishable with fine which may extend to one hundred rupees.

Raising or  
removal  
of wreck  
impeding  
navigation  
within limits  
of port

14. (1) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent. of the amount of such expenses, the conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto :

Provided that the person makes his claim within three years from the date of the sale.

Power to  
board vessels  
and enter  
buildings.

15. (1) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

and the person appointed under this Act to receive any port-dues, fees or other charges, payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to two hundred rupees.

*(Chapter III.—Port-officials and their Powers and Duties.)*

16. (1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master. Power to require crews to prevent or extinguish fire.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

17. (1) The <sup>1</sup>[Government] may appoint at any port subject to this Act an officer to be called the health-officer. Appointment and powers of health-officer

(2) A health-officer shall, subject to the control of the <sup>1</sup>[Government], have the following powers, within the limits of the port for which he is appointed, namely:—

- (a) with respect to any vessel, the powers conferred on a shipping-master by the Indian Merchant Shipping Act, 1859,<sup>2</sup> section 71 ;
- (b) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel ;
- (c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel ;
- (d) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask ;
- (e) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

18. The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such authority, deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel : Indemnity of Government against act or default of port official or pilot.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> See now s. 91 of the Indian Merchant Shipping Act, 1923 (21 of 1923).

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Rules for the Safety of Shipping and the Conservation of Ports.)

Provided that nothing in this section shall protect <sup>1</sup>[the Crown] from a suit in respect of any act done by or under the express order or sanction of the Government.

## CHAPTER IV.

### RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

#### *General Rules.*

Injuring  
buoys, bea-  
cons and  
moorings.

19. (1) No person shall, without lawful excuse, lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority of, the <sup>2</sup>[Government] in any port subject to this Act.

(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

Wilfully  
loosening  
vessel from  
moorings.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Improperly  
discharging  
ballast.

21. (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods <sup>3</sup>[and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (ee) of sub-section (1) of section 6 apply, otherwise than in accordance with such rules].

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing <sup>3</sup>[or so discharges any oil or water mixed with oil], and the master of any vessel from which the same is so cast, <sup>4</sup>[thrown or discharged], shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing <sup>3</sup>[or from so discharging any oil or water mixed with oil], any master

<sup>1</sup> Subs. by the A. O. 1937 for "the Secretary of State for India in Council".

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> Ins. by the Indian Ports (Amendment) Act, 1923 (39 of 1923), s. 3.

<sup>4</sup> Subs. by s. 3, *ibid.*, for "or thrown".

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continues so to cast, <sup>1</sup>[throw or discharge the same], he shall also be liable to simple imprisonment for a term which may extend to two months.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into, <sup>2</sup>[or the oil or water mixed with oil is discharged in or into,] any such port with the consent in writing of the conservator, or within any limits within which such act may be authorized by the <sup>3</sup>[Government].

22. If any person graves, breams or smokes any vessel in any such port contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the <sup>1</sup>[Government], he and the master of the vessel shall for every such offence be punishable with fine which may extend to five hundred rupees each. Graving vessel within prohibited limits.

23. If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the <sup>3</sup>[Government], or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each. Boiling pitch on board vessel within prohibited limits.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each. Drawing spirits by unprotected artificial light.

25. (1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do. Warping.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

26. (1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port. Leaving out warp or hawser after sunset.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

\* <sup>1</sup> Subs. by the Indian Ports (Amendment) Act, 1923 (39 of 1923), s. 3, for "or throw it".

<sup>2</sup> Ins. by s. 3, *ibid.*

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".



(Chapter IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

Discharge of  
fire-arms in  
port.

27. If any person, without lawful excuse, discharges any fire-arm in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the <sup>1</sup>[Government], he shall for every such offence be punishable with fine which may extend to fifty rupees.

Penalty on  
master omit-  
ting to take  
order to  
extinguish  
fire.

28. If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Unauthorized  
person not  
to search for  
lost stores

29. (1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

Removing  
stones or in-  
juring shores  
of port pro-  
hibited.

30. (1) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port ;

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

*Special Rules.*

Moving of  
vessels with-  
out pilot or  
permission  
of harbour-  
master.

31. (1) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board ;

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

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port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board, unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority :

<sup>1</sup>[Provided that the <sup>2</sup>[Government] may, by notification in the <sup>3</sup>[Official Gazette], direct that in any port specified in such notification the provisions of this sub-section shall not apply to sailing vessels of any measurement not exceeding a measurement so specified.]

<sup>4</sup>[(2) Notwithstanding anything in sub-section (1), the owner or master of a vessel which is by that sub-section required to have a pilot, harbour-master or assistant of the port-officer or harbour-master on board, shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel, in the same manner as he would have been if he had not been so required by that sub-section :

Provided that the provisions of this sub-section shall not take effect till the first day of January, 1918, or such earlier date as the <sup>2</sup>[Central Government] may notify in that behalf in the <sup>3</sup>[Official Gazette].

<sup>5</sup>[(3)] If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (1), the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

\* \* \* \* \*

32. (1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended shall be provided with a proper force-pump and hose and appurtenances, for the purpose of extinguishing any fire which may occur on board.

Provision of certain vessels with fire-extinguishing apparatus.

(2) The master of such a vessel who, having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

<sup>1</sup> Ins by the Indian Ports (Amendment) Act, 1925 (36 of 1925), s 2

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>3</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>4</sup> Ins. by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s 5 (1).

<sup>5</sup> The original sub-sections (2), (3) and (4) were re-numbered (3), (4) and (5) respectively by s. 5 (ii), *ibid.*

<sup>6</sup> Sub-sections (4) and (5), as re-numbered by s 5, *ibid.*, rep. by Act 36 of 1925, s. 2 (2).

## (Chapter V.—Port-dues, Fees and other Charges.)

## CHAPTER V.

## PORT-DUES, FEES AND OTHER CHARGES.

Levy of port-dues.

33. (1) <sup>1</sup>[Subject to the provisions of sub-section (2),] in each of the ports mentioned in the first schedule, such port-due, not exceeding the amount specified for the port in the third column of the schedule as the <sup>2</sup>[Government] directs, shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

<sup>3</sup>[(2) The <sup>2</sup>[Government] may, by notification in the <sup>4</sup>[Official Gazette], alter or add to any entry in the first schedule relating to ports <sup>5</sup>[in <sup>6</sup>any Province] or, as the case may be, in the Province], and this power shall include the power to regroup any such ports.

7\* \* \* \* \*

<sup>8</sup>[(3)] Whenever the <sup>2</sup>[Government] <sup>9</sup>\* \* \* declares any other port to be subject to this Act, it may, <sup>10</sup>\* \* \* by the same or any subsequent declaration, further declare,—

(a) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,

(b) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and

(c) the times at which such vessels are to be so chargeable.

11\* \* \* \* \*

<sup>8</sup>[(4)] All port-dues now leviable in any port shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

<sup>8</sup>[(5)] An order increasing or imposing port-dues under this section shall not take effect till the expiration of sixty days from the day on which the order was published in the <sup>4</sup>[Official Gazette].

<sup>1</sup> Ins. by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s. 6 (i).

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> Ins. by Act 6 of 1916, s. 6 (ii).

<sup>4</sup> Subs. by the A. O. 1937 for "local Official Gazette".

<sup>5</sup> Subs. by the A. O. 1937 for "within its own Province".

<sup>6</sup> Subs. by the A. O. 1948 for "British India".

<sup>7</sup> The proviso rep. by the A. O. 1937.

<sup>8</sup> The original sub-sections (2), (3) and (4) were re-numbered (3), (4) and (5) respectively, by Act 6 of 1916, s. 6 (iv).

<sup>9</sup> The words "with the previous sanction of the G. G. in C." rep. by s. 6 (iii), *ibid.*

<sup>10</sup> The words "with like sanction" rep. by s. 6 (iii), *ibid.*

<sup>11</sup> The proviso, ins. by s. 6 (iii), *ibid.*, rep. by the A. O. 1937.

*(Chapter V.—Port-dues, Fees and other Charges.)*

34. The <sup>1</sup>[Government] may, <sup>2</sup>[after consulting the authority Variation of port-dues by Government.  
appointed under section 36,] exempt, <sup>3</sup>[subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels] entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them <sup>2</sup>[or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues] :

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

35: (1) Within any port subject to this Act, fees may be charged for Fees for pilotage and certain other services.  
pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the <sup>1</sup>[Government] may direct.

\* \* \* \* \*

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

36. (1) The <sup>1</sup>[Government] shall appoint some officer or body of Receipt, expenditure and account of port charges.  
persons at every port at which any dues, fees or other charges are authorized to be taken by or under this Act to receive the same and, subject to the control of the <sup>1</sup>[Government], to expend the receipts on any of the objects authorized by this Act.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing, in such detail as the <sup>1</sup>[Government] prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable an abstract, in such form as <sup>1</sup>[the Government] prescribes, of the account for the past financial year.

\* \* \* \* \*

(4) All money received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including—

(a) fines,

(b) proceeds of waifs, and

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Ins. by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s. 7.

<sup>3</sup> Subs. by s. 7, *ibid.*, for "the vessels".

<sup>4</sup> The original proviso had been rep. by s. 8, *ibid.*; and the proviso, ins. by the Bengal Pilot Service (Centralisation of Administration) Act, 1929 (11 of 1929), s. 3, was rep. by the A. O. 1937.

<sup>5</sup> Subs. by the A. O. 1937 for "that Govt.".

<sup>6</sup> Sub-section (3) rep. by Act 6 of 1916, s. 9.

*(Chapter V.—Port-dues, Fees and other Charges.)*

(c) any balance of the proceeds of a sale under section 14 where no right to the balance has been established on a claim made within three years from the date of the sale, shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

- (a) the pay and allowances of all persons upon the establishment of the port,
- (b) the cost of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,
- (c) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues, or such portion of those pensions, allowances and gratuities as the <sup>1</sup>[Government] may by rule determine,
- (d) with the previous sanction of the <sup>1</sup>[Government], contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seamen or otherwise towards the provision of sanitary superintendence and medical aid for the shipping in the port and for seamen whether ashore or afloat belonging to vessels in the port, and
- (e) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,

shall be charged to the port fund account of the port.

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the <sup>1</sup>[Government] may direct.

Grouping of  
ports.

37. (1) The <sup>1</sup>[Provincial Government] may direct that for the purposes of the last foregoing section any number of ports <sup>2</sup>[in the Province not being major ports] shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under subsection (4) of that section shall form a common port fund account which shall be available for the payment of all expenses incurred for the sake of any of the ports.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Ins. by the A. O. 1937.

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1\*                      \*                      \*                      \*                      \*

(2) Where ports are grouped by or under this Act, the following consequences ensue, namely :—

(a) the <sup>2</sup>[Provincial Government], in the exercise of its control over expenditure debitable to the common port fund account of the group, may <sup>3</sup>\*                      \*                      \* make rules with respect to the expenditure of the fund for the sake of the several ports of the group on the objects authorised by this Act <sup>4</sup>\*                      \*                      \* ; and

(b) the <sup>2</sup>[Provincial Government] may exercise its authority under section 34 as regards all the ports in the group collectively or as regards any of them separately.

38. The person to whom any dues, fees or other charges authorised to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made. Receipts for port-charges.

39. (1) Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act, the master of the vessel shall report her arrival to the conservator of the port. Master to report arrival.

(2) A master failing without lawful excuse to make such report within the time aforesaid shall for every such offence be punishable with fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry-steamers or river steamers plying to and from any of the ports subject to this Act <sup>5</sup>\*                      \*                      \*.

40. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expenses of the operation. Conservator may in certain cases ascertain draught and charge expense to master.

<sup>1</sup> The proviso rep. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> The words "subject to the control of the G. G. in C." rep. by the A. O. 1937. The words "subject to the control" had been subs. for the words "with the previous sanction" by the Indian Ports (Amendment) Act, 1916 (6 of 1916), s. 10.

<sup>4</sup> The words "and shall cause effect to be given to any directions which the G. G. in C. may deem it necessary to issue with respect to such expenditure" rep. by the A. O. 1937.

<sup>5</sup> The words "or to ballam boats plying to and from the port of Chittagong" rep. by the A. O. 1948.

*(Chapter V.—Port-dues, Fees and other Charges.)*

Ascertain-  
ment of ton-  
nage of vessel  
liable to port-  
dues.

41. In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed, namely :—

(1) (a) If the vessel is a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in <sup>1</sup>[the Provinces of India] the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection. X of 1841.  
XI of 1850.

(b) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

(2) If the vessel is not a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in <sup>1</sup>[the Provinces of India] and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained, according to the mode aforesaid, and in such case the owner or master of the vessel shall be liable to pay the expenses of the measurement. X of 1841.  
XI of 1850.

(3) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clauses (1) and (2), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

Distraint  
and sale on  
refusal to pay  
port-charges.

42. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle,

<sup>1</sup> Subs. by the A. O. 1948 for " British India ",

## (Chapter V.—Port-dues, Fees and other Charges.)

apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid ;

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested, remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs including the costs of sale remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

43. The officer of <sup>1</sup>[the Crown] whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

No port-clearance to be granted until port-charges are paid.

(a) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act ;

57 and 58  
Vict., c. 60.

(b) until all expenses, which by the <sup>2</sup>Merchant Shipping Act, 1894, section 207, are to be borne by her owner, incurred since her arrival in the port from which he seeks clearance, have been paid.

44. (1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in <sup>3</sup>[the Provinces] to which she may proceed, or in which she may be, to levy the sum.

Port-charges payable in one port recoverable at any other port.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable, stating the amount payable, shall be sufficient *prima facie* proof of such amount in any proceeding under section 42 and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

45. (1) If the master of a vessel evades the payment of any such sum as is mentioned in section 43, he shall be punishable with fine which may extend to five times the amount of the sum.

Penalty for evading payment of port-charges.

<sup>1</sup> Subs. by the A. O. 1937 for " Govt. ".

<sup>2</sup> Coll. Stat., Vol. II.

<sup>3</sup> Subs. by the A. O. 1948 for " British India ".



## (Chapter V.—Port-dues, Fees and other Charges.)

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1), any such certificate as is mentioned in section 44, sub-section (2), stating that the master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

Port-due on  
vessels in  
ballast.

46. A vessel entering any port subject to this Act <sup>1</sup>\* \* \* in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the <sup>2</sup>[Government] and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

Port-due on  
vessels not  
discharging  
or taking in  
cargo.

47. When a vessel enters a port subject to this Act, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the <sup>2</sup>[Government] and not exceeding half the rate with which she would otherwise be chargeable.

Port-due not  
to be charge-  
able in certain  
cases.

48. No port-due shall be chargeable in respect of—

- (a) any pleasure-yacht, or
- (b) any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or
- (c) any vessel which, having entered any port within the territories administered by the Governor of Fort Saint George in Council, leaves it within forty-eight hours without discharging or taking in any passengers or cargo.

Power to im-  
pose hospital  
port-dues.

49. (1) The <sup>2</sup>[Central Government] may, by notification in the <sup>3</sup>[Official Gazette], order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the <sup>2</sup>[Central Government] thinks fit.

(2) Such port-dues shall be called hospital port-dues, and the <sup>2</sup>[Central Government] shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (d).

<sup>1</sup> The words and brackets " (other than a port in Burma)" rep. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G."

<sup>3</sup> Subs. by the A. O. 1937 for "local official Gazette".

(Chapter V.—*Port-dues, Fees and other Charges.* Chapter VI.—*Hoisting Signals.*)

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the <sup>1</sup>[Official Gazette].

(4) Whenever the <sup>2</sup>[Central Government] is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the <sup>1</sup>[Official Gazette] exempt such class of vessels from any payment under this section.

50. (1) Hospital port-dues shall be applied, as the <sup>2</sup>[Central Government] may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat. Application and account of hospital port-dues.

(2) The <sup>2</sup>[Central Government] shall publish annually in the <sup>1</sup>[Official Gazette], as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(3) Such account shall be published as a supplement to the abstract published under section 36, sub-section (2).

## CHAPTER VI.

### HOISTING SIGNALS.

51. (1) The master of every inward or outward bound vessel, on arriving within signal distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station. Master to hoist number of vessel.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

<sup>1</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

*(Chapter VI.—Hoisting Signals. Chapter VII.—Provisions with respect to Penalties.)*

Pilot to require master to hoist number

52. (1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing section.

(2) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

Penalty on pilot disobeying provisions of this Chapter

53. Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter, shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and, in addition, shall be liable to have his authority to act as a pilot withdrawn.

## CHAPTER VII.

### PROVISIONS WITH RESPECT TO PENALTIES.

Penalty for disobedience to rules and orders of the Government.

54. If any person disobeys any rule or order which a <sup>1</sup>[Government] has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

Offences how triable, and penalties how recovered.

55. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Costs of conviction.

56. (1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

Ascertainment and recovery of expenses and damages payable under this Act.

57. (1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G."

(Chapter VII.—Provisions with respect to Penalties. Chapter VIII.—  
Supplemental Provisions.)

58. Whenever any fine, expenses or damages is or are levied under this Act by distress and sale, the cost of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner. Cost of distress

59. If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable, and payment of such costs, if not paid on demand, shall be enforced as if they were a fine. Magistrate to determine the amount to be levied in case of dispute.

60. (1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port. Jurisdiction over offences beyond local limits of jurisdiction.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

61. (1) No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds. Conviction to be quashed on merits only.

(2) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions.

## CHAPTER VIII.

### SUPPLEMENTAL PROVISIONS. .

62. (1) If any vessel belonging to any of His Majesty's subjects, or sailing under British colours, hoists, carries or wears, within the limits of any port subject to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the <sup>1</sup>Merchant Shipping Act, 1894, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of His Majesty's regulations in force for the time being, the master of Hoisting unlawful colours in port.

*(Chapter VIII.—Supplemental Provisions.)*

the vessel shall, for every such offence, be punishable with fine which may extend to fifty rupees.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of His Majesty's Navy or <sup>1</sup>[the Royal Indian Navy], may enter on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

Foreign  
deserters.

63. Any Magistrate, upon an application being made to him by the Consul of any foreign Power to which section 238 of the <sup>2</sup>Merchant Shipping Act, 1894, has, by an Order in Council, been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such foreign Power, may, until a revocation of such Order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month:

<sup>57 & 58</sup>  
Vict., c. 60.

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.

Application  
of sections  
10 and 21.

64. (1) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the <sup>3</sup>[Government] to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions, shall be recoverable respectively in the manner provided in sections 55 and 57.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the <sup>4</sup>[Government].

Grant of sites  
for sailors'  
institutes.

65. Any local authority in which any immoveable property in or near a port is vested may, <sup>4</sup>[with the previous sanction, in the case of a cantonment authority or the port authority of a major port, of the Central Government, and in other cases, of the Provincial Government] appropriate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the property as a site for, or for use as, a sailor's home

<sup>1</sup> Subs. by the A. O. 1937 for "Indian Marine Service".

<sup>2</sup> Coll. Stat., Vol. II.

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>4</sup> Subs. by the A. O. 1937 for "with the previous sanction of the L. G.".

*(Chapter VIII.—Supplemental Provisions).*

or other institution for the health, recreation and temporal well-being of sailors.

66. (1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

Exercise of powers of conservator by his assistants.

(2) Any person authorised by this Act to do any act may call to his aid such assistance as may be necessary.

67. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

Service of written notices of directions.

68. Every declaration, order and rule of a <sup>1</sup>[Government] made in pursuance of this Act shall be published in the <sup>2</sup>[Official Gazette], and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

Publication of orders of Government.

<sup>3</sup>[68A. Every authority exercising any powers or jurisdiction in, or relating to, any port to which this Act for the time being applies, shall if so required by an officer authorised by general or special order of the <sup>4</sup>[Central Government] in this behalf, co-operate in such manner as such officer may direct, in carrying out any manœuvres in connection with any scheme or preparations for the defence of the said port in time of war, and for this purpose shall, if so required, temporarily place at the disposal of such officer the services of any of its staff and the use of any of its vessels, property, equipment or other material :

Authorities exercising jurisdiction in ports to co-operate in manœuvres for defence of port.

Provided, firstly, that if any vessels are placed at the disposal of such officer in accordance with this section, the <sup>5</sup>[Central Government] shall, in respect of the period during which they are so at his disposal, bear the running expenses of such vessels, and be responsible for any damage thereto.

*Explanation.*—The expression “running expenses” in this proviso includes all outlay incurred in connection with the use of the vessels other than any charges for their hire, or for the wages of the officers and crews of such vessels :

Provided, secondly, that any officer making a requisition under this section shall exercise his powers in such a way as to cause as little disturbance to the ordinary business of the port as is compatible with the exigencies of the efficient carrying out of the manœuvres :

<sup>1</sup> Subs. by the A. O. 1937 for “L. G.”.

<sup>2</sup> Subs. by the A. O. 1937 for “local official Gazette”.

<sup>3</sup> Ss. 68A and 68B ins. by the Indian Ports (Amendment) Act, 1916 (6 of 1916),

s. II.

<sup>4</sup> Subs. by the A. O. 1937 for “G. G. in G.”.

<sup>5</sup> Subs. by the A. O. 1937 for “G. of I.”.

## (Chapter VIII.—Supplemental Provisions. The First Schedule.)

Provided, thirdly, that no suit or other legal proceeding shall be against any authority for any default occurring by reason only of compliance with a requisition under this section.

Duties of the said authorities in an emergency.

68B. Whenever the <sup>1</sup>[Central Government] is of opinion that an emergency has arisen which renders it necessary that the duties imposed for the purposes specified in section 68A on the authorities therein mentioned, or other duties of a like nature, should be imposed on such authorities, continuously during the existence of the emergency, <sup>2</sup>[it] may, by general or special order, authorise any officer to require the said authorities to perform such duties until the <sup>3</sup>[Central Government] is of opinion that the emergency has passed, and the said authority shall comply accordingly, and the provisions of the said section shall apply subject to the following modification, namely :—

The <sup>1</sup>[Central Government] shall pay any authority, on whom a requisition has been made, such compensation for any loss or damage attributable to such requisition, and for any services rendered or expenditure incurred in complying therewith as, in default of agreement, shall be decided to be just and reasonable, having regard to the circumstances of the case, by the arbitration of a person to be nominated in this behalf by the <sup>1</sup>[Central Government], and the decision of such person shall be final.]

69. [Repeal.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

## THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND FREQUENCY OF PAYMENT.

(See sections 1 and 33.)

PART I.—<sup>4</sup>[WEST BENGAL AND ORISSA.]

Name of port. 1	Vessels chargeable. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
Calcutta ...	Sea-going vessels of twenty tons and upwards	<sup>5</sup> [Not exceeding four annas per ton: provided that in the case of <i>dhoms</i> and country vessels employed in the coasting trade (or in trade) exclusively between India and Burma, the rate shall be one-half the rate chargeable in respect of other vessels.]	Whenever the vessel enters the port, except in the case of mail-steamers, coasting-vessels and vessels engaged in trade exclusively between India and Burma, which shall not be chargeable more than once in sixty days.]

<sup>1</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>2</sup> Subs. by the A. O. 1937 for "he".

<sup>3</sup> Subs. by the A. O. 1937 for "G. of I.".

<sup>4</sup> Subs. by the A. O. 1948 for "Bengal".

<sup>5</sup> Subs. by Notification No. 19-P. (44)/45-I, dated 8th February, 1946, (see Gazette of India, 1946, Pt. I, p. 249) for the former entries.

THE FIRST SCHEDULE—*contd.*  
PART I.—WEST BENGAL AND ORISSA—*concl'd.*

Name of port 1	Vessels chargeable. 2	Rate of port-dues. 3	Due how often charge- able in respect of same vessel. 4
Calcutta— <i>cont'd</i>	Tug-steamers and river- steamers.	Not exceeding four annas per ton.	Once between the 1st Janu- ary and the 30th June, and once between the 1st July and the 31st Decem- ber, in each year.
Cuttack Ports,— namely, False Point and Pooree.	Sea-going ves- sels of ten tons and upwards.	Not exceeding four annas per ton.	Whenever the vessel enters any one of the ports ex- cept in the case of mail- steamers and coasting ves- sels, which shall not be chargeable more than once in sixty days.
Balasore Ports,— namely, Bala- sore, Churaman, L a i c h h u n p u r , Chanua, Subar- narekha Dham- ra (Chandbally) and Sartha.	Ditto ..	Ditto ...	Whenever the vessel enters any one of the ports, ex- cept in the case of mail- steamers and coasting ves- sels, which shall not be chargeable more than once in thirty days.

PART II.—MADRAS PRESIDENCY.

Name of port. 1	Vessels charge- able. 2	Rate of port-dues 3	Due how often chargeable in respect of same vessel. 4
		<i>Foreign Vessels.</i>	
	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Set- tlements or Ceylon calling at Madras, not exceeding four annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.
		(b) In the case of any other foreign ship or steamer calling at Madras, not ex- ceeding four annas a ton.	The due is payable on each entry into the port.
		<i>Coasting Vessels.</i>	
		(c) In the case of a coasting ship calling at Madras, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
Madras ...		(d) In the case of a coast- ing steamer calling at Madras, not exceeding three annas a ton.	The due is payable once in thirty days.



THE FIRST SCHEDULE—*contd.*PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3*	4
		<i>Foreign Vessels.</i>	
<sup>1</sup> [Cochin	... Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer engaged in trade with the Straits Settlements or Ceylon calling at Cochin, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.
		(b) In the case of any other foreign ship or steamer calling at Cochin, not exceeding three annas a ton.	The due is payable on each entry into port.
		<i>Coasting Vessels.</i>	
		(c) In the case of a coasting ship calling at Cochin, not exceeding <sup>2</sup> [one anna and four pies] a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
		(d) In the case of a coasting steamer calling at Cochin, not exceeding three annas a ton.	The due is payable once in thirty days.]

<sup>1</sup> Added by Madras Government Order No. 135, dated 4th April, 1922.

<sup>2</sup> Subs. for "one anna" by Notification No. 11-P. (58)/41-I, dated 19th June, 1941, see Gazette of India, 1941, Pt. I, p. 899.

THE FIRST SCHEDULE—*contd.*PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Eastern Group.</i>			<i>Foreign Vessels.</i>	
Dis-trict.	Port.	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
Gan-jam.	1. Gopalpur ...		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	2. Baruva ...			
	3. Calingapatam ...		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
Vizagapatam.	4. Bimlipatam		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	5. 1* * * *			
Goda-vari.	6. Cocanada		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	7. Coringa ...			
Kistna.	8. Narasapur			
	9. Perupalem			
	10. Masulipatam			
	11. Nagayalanka			
	12. Kottapalem			
Guntur.	13. Moratata ...		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	14. Gangadipalem ...			
	15. Nizampatnam ...			
	16. Ipurupalem			
	17. Motupalle			
	18. Kottapatnam ...			

<sup>1</sup> For the omission of the port of Vizagapatam, see Fort St. George Gazette, 1925, Pt. I, p. 587. For the rates of port dues leviable in that port, see Gazette of India, 1934, Pt. I, p. 792.

THE FIRST SCHEDULE—*contd.*PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Eastern Group—contd.</i>			<i>Foreign Vessels.</i>	
District.	Port.		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
Nellore.	19. Iskaalle ...		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
Chingleput	20. Cavelong ...		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
South Arcot.	21. Cuddalore	Sea-going vessels of fifteen tons and upwards.	(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	22. Porto Novo			
	<sup>1</sup> 23. <i>Thandavara yasolaganpettai</i> ...			
	24. Tirumalavasal ...			
	25. Tranquebar			
Tanjore.	26. Nagore ...			
	27. Negapatam			
	28. Velankani			
	29. Topputurai		<i>Coasting Vessels.</i>	
	30. Point Calimere ...		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	31. Mutupet ...			
	32. Adirampatnam ...		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	33. Gopalapatnam ...			
	34. Kattumavedi ...			
	35. Krishnaji-patnam ...			
	36. Ammapatnam ...			
	37. Kottai-patnam ...			
	38. Sundara-pandiyapatnam ...			

<sup>1</sup> The Act has been withdrawn from this port, see Fort St. George Gazette, 1909, Pt. I, p. 257.

THE FIRST SCHEDULE—*contd.*PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Eastern Group—contd</i>				
			<i>Foreign Vessels.</i>	
District.	Port		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
Madura.	39. Vattanam	Sea-going vessels of fifteen tons and upwards.	(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	40. Tondi ..			
	41. Pudupatnam		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	42. Karangadu			
	43. Tirupalan-kudi.			
	44. Devipatnam		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	45. Mudiyanpatnam.			
	46. Alagayankolam.			
	47. Attankarai			
	48. Emanangundu.		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	49. Pamban ...			
Tinnevely.	50. Ramesvaram.			
	51. Mandapam			
	52. Vedalai ...			
	53. Muttupettai		<i>Coasting Vessels.</i>	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	54. Kilakarai ...			
	55. Ervadi ...		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	
	56. Valinokkam			
	57. Vembar ..			
	58. Vaippar ...			
	59. Tuticorin ...			
	60. Ovary ...			
	61. Kayalpatnam.			
	62. Kulasekharapatnam.			

THE FIRST SCHEDULE—*contd.*PART II.—MADRAS PRESIDENCY—*contd.*

Name of port. 1		Vessels charge- able. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
<i>Eastern Group—concl'd.</i>			<i>Foreign Vessels.</i>	
Dis- trict.	Port.	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon, calling at Vizagapatam, not exceeding four annas a ton.	<sup>2</sup> [The due is payable once in thirty days.]
			(b) In the case of any other foreign ship or steamer calling at Vizagapatam, not exceeding four annas a ton.	
			<i>Coasting Vessels.</i>	
	<sup>1</sup> [Vizagapatam.]		(c) In the case of a coasting ship calling at Vizagapatam, not exceeding <sup>3</sup> [three annas] a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
			(d) In the case of a coasting steamer calling at Vizagapatam, not exceeding four annas a ton.	The due is payable once in thirty days.]

<sup>1</sup> For the insertion of this port, see Fort St. George Gazette, 1925, Pt. I, p. 587.<sup>2</sup> Subs. by Notification No. 222-P. & L./33 (V), dated 5th August, 1933, for the former entries.<sup>3</sup> Subs. by Notification No. 15-P. (7)/43-I, dated 22nd June, 1943 (see Gazette of India, 1943, Pt. I, p. 682) for "two annas and eight pies" which had been subs. for "two annas" by Notification No. 19-P. (33)/41-I, dated 17th March, 1942 (see Gazette of India, 1942, Pt. I, p. 593).

THE FIRST SCHEDULE—*contd.*  
PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Western Group.</i>			<i>Foreign Vessels.</i>	
<i>Dis- trict</i>	<i>Port.</i>		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
<i>Malabar.</i>	63. * * * ...	Sea-going vessels of fifteen tons and upwards.	(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	64. Chavakad			
	{ 65. Velivangod			
	{ 66. Ponani ...			
	{ 67. Kuttayi ...			
	{ 68. Parapanna			
	{ 69. Tanur ...		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	{ 70. Parpanan-gadi.			
	{ 71. Ferokeh ...			
	{ 72. Bepore ...			
	{ 73. Calicut ...			
	{ 74. Kappatta			
	{ 75. Quilandi		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	{ 76. Kottakkal			
	{ 77. Badagara ...			
	{ 78. Muttankal			
	{ 79. Chompayi		<i>Coasting Vessels.</i>	
	{ 80. Kallayi ...		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	{ 81. Talayi ...			
	82. Tellicherry			
	83. Cannanore			
	{ 84. Pudiyan-gadi.		(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	{ 85. Azhikal ...			
	{ 86. Ettikulam			
	{ 87. Kavvayi ...			

<sup>1</sup> For the omission of the port of Cochin, see Madras Government Order No. 135, dated 4th April, 1922.

THE FIRST SCHEDULE—*contd.*  
PART II.—MADRAS PRESIDENCY—*concl'd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Western Group—contd.</i>			<i>Foreign Vessels.</i>	
Dis-	Port.		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	88. Hosdrūg ...	Sea-going vessels of fifteen tons and upwards.	(b) In the case of any other foreign ship or steamer calling at any port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	89. Baikal ...			
	90. Kasaragod		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	91. Kumbale ...		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	92. Manjesvara			
	93. Mangalore		<i>Coasting Vessels.</i>	
	94. Mulki ...			
	95. Padubidri		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	96. Ermala ...			
	97. Uchhila ...		(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	98. Kaph ...			
	99. Malpe ...			
	100. Hangarakatta or Barkur.			
	101. Coondapoor			
	102. Nyakinkatte (Nayakankottai).			
	103. Baindur ...			
	104. Siruru ..			

THE FIRST SCHEDULE—*contd.**Explanations to Part II of the First Schedule*

*Explanation 1.*—In this Part of the schedule—

- <sup>1</sup>[(a) "ship" means a vessel propelled solely by wind power and "steamer" any vessel other than a ship;]
- (b) "coasting ship" or "coasting steamer" means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south-easternmost part of Burma; and "coasting steamer" includes a coasting steam-vessel having a general pass under section 164 of the Sea Customs Act, 1878; VIII of 1878
- <sup>2</sup>[(bb) in so far as the ports of Madras, Vizagapatam and Cochin are concerned "coasting ship" and "coasting steamer" mean, respectively, a ship or steamer which at the port of Madras, Vizagapatam or Cochin discharges cargo exclusively from, or takes in cargo exclusively for, <sup>3</sup>[any port on the continent of India or in Burma or in the island of Ceylon] \* \* \* and "coasting steamer" includes a coasting steam-vessel having a general pass under section 164 of the Sea Customs Act, 1878;] VIII of 1878.
- (c) "foreign ship" or "foreign steamer" means respectively a ship or steamer not being a coasting ship or coasting steamer:

Provided that. for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher.

*Explanation 2.*—Ports enclosed in double brackets in the first column of the schedule shall be treated as if they were only one port; every vessel in respect of which such dues have been charged and taken at one of the bracketted ports being exempted from the payment of port-dues on entering another port bracketted with it within the period specified in the fourth column of the schedule.

## PART III.—BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Bombay	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding four annas per ton	Once in the same month.
	<sup>5</sup> [Tug-boats, ferry-boats and river-boats, whether propelled by steam or other mechanical means.]	Ditto	Once between the 1st January and the 30th June, and once between the 1st July and 31st December, in each year.

<sup>1</sup> Subs. by the Madras Indian Ports (Amendment) Act, 1925 (Mad. 1 of 1926), s. 2, for the original clause.

<sup>2</sup> Ins. by Notification of the Govt. of India in the Commerce Department, No. 19-P. (27)/37, dated 7th August, 1937.

<sup>3</sup> Subs. for "any port in the island of Ceylon or any part of India" by Notification No. 19-P. (44)/45-I, dated 8th February, 1946, *see* Gazette of India, 1946, Pt. I, p. 249.

<sup>4</sup> The words "and Burma, between the westernmost part of Sind and the southernmost part of Burma" rep. by Notification No. 19-P. (20)/41-I, dated 4th August, 1941, *see* Gazette of India, 1941, Pt. I, p. 1153.

<sup>5</sup> Subs. by Notification of the Govt. of Bombay in the Marine Department, No. 459, dated 27th March, 1923, for "Tug-steamers, ferry steamers and river-steamers".



THE FIRST SCHEDULE—*contd.*PART III.—BOMBAY PRESIDENCY—*contd.*

Name of port.	Vessels chargeable	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
<i>Northern Group of Ports.</i>			
1. Goga ...			
2. Dholera (Whittle Bandar) ...			
3. Tankari ...			
4. Dehegam .			
5. Kavi ...			
6. Dehej ...			
7. Broach ...			
8. Bhagwa ...			
9. Surat ...			
10. Matwad ...			
11. Balsar ...			
12. Umarsadi ...	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the <sup>1</sup> [Government] and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port: provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
13. Kolak ...			
14. Kalai ...			
15. Maroli ...			
16. Umbargam ...			
17. Gholwad ...			
18. Dahanu Creek ...			
19. Tarapur ...			
20. Olivara Navapur ...			
21. Satpati Creek ...			
22. Mahim (Kelva) ...			
23. Kelva ...			
24. Dantiora ...			
25. Arnala ...			

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

THE FIRST SCHEDULE—*contd.*PART III.—BOMBAY PRESIDENCY—*contd.*

Name of port. 1	Vessels chargeable. 2	Rate of port-dues. 3	Due how often chargeable in respect of same vessel. 4
<i>Southern Group of Ports.</i>			
1. Bandra ...			
2. Vesava ..			
3. Manori ..			
4. Utan ..			
5. Bassein ..			
6. Bahivadi ...			
7. Kalyan ...			
8. Thana ..			
9. Mahul ..			
10. Trombay ..			
11. Panwel ..			
12. Mora ..			
13. Karanja ..			
14. Thal ..			
15. Alibag ...			
16. Revdanda ..			
17. Mandad ...			
18. Bankot ...			
19. Kelshi ...			
20. Harnai ...			
21. Dabhoi ...			
22. Borya ...			
23. Jaygad ...			
24. Varavda ...			
25. Ratnagiri ...			
26. Purangad ...			
27. Jayatapur ...			
28. Vijaydurg ...			
29. Devgad ..			
30. Achra ..			
31. Malwan ..			
32. Nivti ..			
33. Vengurla ...			
34. Redi ..			
35. Kirnapani ...			
36. Tilmati ...			
37. Sadashivgad			
38. Karwar, in- cluding Bait- khol ...			
39. Bingi ...			
40. Chendya ...			
41. Belikeri ...			
42. Ankola ...			
43. Gangavali ...			
44. Tadri ...			
45. Kumpta ...			
46. Honawar ...			
47. Manki ...			
48. Murdeshwar			
49. Shirali ...			
50. Bhatkal ...			
	Sea-going vessels of ten tons and up- wards (except fishing-boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the <sup>1</sup> [Government] and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port: provided that no coasting vessel or coasting steamer, having paid port dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days

<sup>1</sup> Subs by the A. O. 1937 for "L. G.".

THE FIRST SCHEDULE—*concl'd.*PART III.—BOMBAY PRESIDENCY—*concl'd.*

Name of port.	Vessels chargeable	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
1* *	* *	* *	* *
2* *	* *	* *	* *

[Part IV.—Burma.] Rep. by the A. O. 1937.

[Part V.—Eastern Bengal and Assam.] Rep. by the A. O. 1948.

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## THE INDIAN REGISTRATION ACT, 1908.

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ACT No. XVI OF 1908.<sup>1</sup>

[18th December, 1908.]

An Act to consolidate the enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents ; It is hereby enacted as follows :—

## PART I.

## PRELIMINARY.

1. (1) This Act may be called the Indian Registration Act, 1908.
- (2) It extends to <sup>2</sup>[all the Provinces of India], except such districts or tracts of country as the <sup>3</sup>[Provincial Government] may <sup>4</sup>\* \* \* exclude from its operation.
- (3) It shall come into force on the first day of January, 1909.

Short title,  
extent and  
commence-  
ment.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 325 ; for Report of Select Committee, see *ibid.*, 1908, Pt. V, p. 387 ; and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, pp. 148, 154 and 182.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2 ; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch., and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

The Act has been applied with modifications to certain taluks of the East Godavari Agency, see Notification No. F. 128/29, dated 29th April, 1929, Gazette of India, 1929, Pt. I, p. 662. It has been amended in its application to Bengal by Bengal Act 5 of 1942 ; to Bombay by Bombay Acts 5 of 1929, 17 of 1930, 18 of 1933, 24 of 1938, 14 of 1939 and 10 of 1942 ; to the C. P. by C. P. Act 1 of 1937 ; to Madras by Madras Act 3 of 1936 ; to Orissa by Orissa Act 3 of 1933 ; and to the Punjab by Punjab Act 8 of 1941.

<sup>2</sup> Subs. by the A. O. 1948 for " the whole of British India ".

<sup>3</sup> Subs. by the A. O. 1937 for " L. G. ".

<sup>4</sup> The words " with the previous sanction of the G. G. in C. " rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.



(Part I.—Preliminary. Part II.—Of the Registration-establishment.)

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native of India, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name :

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) "district" and "sub-district" respectively mean a district and sub-district formed under this Act :

(4) "District Court" includes the High Court in its ordinary original civil jurisdiction :

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

(6) "immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass :

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease :

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority :

(9) "moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property : and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

## PART II.

### OF THE REGISTRATION-ESTABLISHMENT.

3. (1) The <sup>1</sup>[Provincial Government] shall appoint<sup>2</sup> an officer to be the Inspector-General of Registration for the territories subject to such Government :

Provided that the <sup>1</sup>[Provincial Government] may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the <sup>1</sup>[Provincial Government] appoints in this behalf.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> For notification appointing the Inspector-General of Registration for the province of Delhi, see Gazette of India, 1912, Pt. I, p. 1105.

## (Part II.—Of the Registration-establishment.)

(2) Any Inspector-General may hold simultaneously any other office<sup>1</sup>[under the Crown].

4. [*Branch Inspector-General of Sindh.*] *Rep. by the A. O. 1937.*

5. (1) For the purpose of this Act, the <sup>2</sup>[Provincial Government] shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts. Districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the <sup>3</sup>[Official Gazette].

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The <sup>2</sup>[Provincial Government] may appoint such persons whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively. Registrars and Sub-Registrars.

\* \* \* \* \*

7. (1) The <sup>2</sup>[Provincial Government] shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars. Offices of Registrar and Sub-Registrar.

(2) The <sup>2</sup>[Provincial Government] may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. (1) The <sup>2</sup>[Provincial Government] may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers<sup>5</sup>. Inspectors of Registration-offices.

(2) Every such Inspector shall be subordinate to the Inspector-General.

9. [*Military cantonments may be declared sub-districts or districts.*] *Rep. by the Repealing and Amending Act, 1927 (X of 1927), s. 3 and Sch. II.*

<sup>1</sup> Subs. by the A. O. 1937 for "under Govt."

<sup>2</sup> Subs. by the A. O. 1937 for "L. G."

<sup>3</sup> Subs. by the A. O. 1937 for "local official Gazette"

<sup>4</sup> The proviso to s. 6, ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, was rep. by the A. O. 1937.

<sup>5</sup> The proviso to sub-section (1) of s. 8, ins. for Bombay by the Indian Registration (Bombay Amendment) Act, 1929 (Bom. 5 of 1929), s. 2, was rep. by the A. O. 1937.

## (Part II.—Of the Registration-establishment.)

Absence of Registrar or vacancy in his office.

10. (1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the <sup>1</sup>[Provincial Government] fills up the vacancy.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the <sup>1</sup>[Provincial Government] fills up the vacancy.

Absence of Registrar on duty in his district.

11. When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

Absence of Sub-Registrar or vacancy in his office.

12. When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until <sup>2</sup>[the vacancy is filled up].

Report to Provincial Government of appointments under sections 10, 11 and 12.

13. (1) <sup>3</sup>\* \* \* All appointments made under section 10, section 11 or section 12 shall be reported to the <sup>1</sup>[Provincial Government] by the Inspector-General.

(2) Such report shall be either special or general, as the <sup>1</sup>[Provincial Government] directs.

4\* \* \* \* \*

Establishments of registering officers.

14. 4\* \* \* \* \*

(2) The <sup>1</sup>[Provincial Government] may allow proper establishments for the several offices under this Act.

Seal of registering officers.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the <sup>1</sup>[Provincial Government] directs :—“ The seal of the Registrar (or of the Sub-Registrar) of . . . ”.

<sup>1</sup> Subs. by the A. O. 1937 for “L. G.”.

<sup>2</sup> Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for “the L. G. fills up the vacancy”.

<sup>3</sup> The words “All appointments made by the Inspector-General under section 6 and”, ins. by s. 2 and Sch., Pt. I, *ibid.*, were rep. by the A. O. 1937.

<sup>4</sup> Sub-section (3) of s. 13 and sub-section (1) of s. 14 relating to the suspension, removal, dismissal and remuneration of persons appointed under the Act were rep. by the A. O. 1937. These conditions of service are now regulated by rules under s. 241 (2) of the G. of I. Act, 1935.

(Part II.—Of the Registration-establishment. Part III.—Of Registrable Documents.)

16. (1) The <sup>1</sup>[Provincial Government] shall provide for the office of every registering officer the books necessary for the purposes of this Act. Register-books and fire-proof boxes.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General with the sanction of the <sup>1</sup>[Provincial Government], and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The <sup>1</sup>[Provincial Government] shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

### PART III.

#### OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, if the property to which they relate is suitable in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :— Documents of which registration is compulsory.

XX of 1866.  
VIII of 1871.  
III of 1877.

(a) instruments of gift of immoveable property ;

<sup>2</sup>(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ;

<sup>2</sup>(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent ;

<sup>3</sup>[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future,

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Clauses (b) and (c) do not apply to instruments relating to shares and debentures of a registered Co-operative Society in Madras Presidency and in B. and O., see Mad. Act 6 of 1932, s. 29 and B. and O. Act 6 of 1935, s. 65, respectively.

<sup>3</sup> Ins. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 10.

*(Part III.—Of Registrable Documents.)*

any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property:]

Provided that the <sup>1</sup>[Provincial Government] may, by order published in the <sup>2</sup>[Official Gazette], exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

- (i) any composition deed ; or
- (ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property : or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company ; or
- (v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest ; or
- (vi) any decree or order of a Court <sup>3</sup>[except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding] ; or
- (vii) any grant of immoveable property by <sup>4</sup>[the Crown] ; or
- (viii) any instrument of partition made by a Revenue-officer ; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883 ; or

XXVI of  
1871.  
XIX of 1883.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>3</sup> Subs. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 10, for "and any award".

<sup>4</sup> Subs. by the A. O. 1937 for "Govt.".

## (Part III.—Of Registrable Documents.)

XII of 1884

- (x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act ; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage ; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer.

<sup>1</sup>[*Explanation*.—A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.

18. Any of the following documents may be registered under this Act, namely:—

Documents of which registration is optional.

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ;
- (c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ;
- <sup>2</sup>[(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ;]
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property ;
- (e) wills ; and
- (f) all other documents not required by section 17 to be registered.

<sup>1</sup> Ins. by the Indian Registration (Amendment) Act, 1927 (2 of 1927), c. 2.

<sup>2</sup> Ins. by the Indian Registration (Amendment) Act, 1940 (33 of 1940), s. 2.

*(Part III.—Of Registrable Documents.)*

Documents  
in language  
not under-  
stood by  
registering  
officer.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents  
containing  
interlinea-  
tions, blanks,  
erasures or  
alterations.

20. (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Description  
of property  
and maps or  
plans.

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Description  
of houses  
and land by  
reference to  
Government  
maps or  
surveys.

22. (1) Where it is, in the opinion of the <sup>1</sup>[Provincial Government], practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the <sup>1</sup>[Provincial Government] may, by rule<sup>2</sup> made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.<sup>3</sup>

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> For rule made by the Govt. of Bengal under s. 22, see Calcutta Gazette, 1911, Pt. I, p. 78.

<sup>3</sup> For s. 22A, applicable to Bombay only, see the Indian Registration (Bombay Amendment) Act, 1938 (Bom. 24 of 1938), s. 2.

*(Part IV.—Of the Time of Presentation.)*

## PART IV.

## OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Time for  
presenting  
documents.

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

<sup>1</sup>[23A. Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

Re-registra-  
tion of  
certain  
documents.

Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.]

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Documents  
executed by  
several per-  
sons at differ-  
ent times.

<sup>1</sup> S. 23A ins. by the Indian Registration (Amendment) Act, 1917 (15 of 1917), s. 2.



(Part IV.—Of the Time of Presentation. Part V.—Of the Place of Registration.)

Provision where delay in presentation is unavoidable.

25. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in <sup>1</sup>[the Provinces] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents executed out of the Provinces.

26. When a document purporting to have been executed by all or any of the parties out of <sup>1</sup>[the Provinces] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in <sup>1</sup>[the Provinces],

may, on payment of the proper registration fee, accept such document for registration.

Wills may be presented or deposited at any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

## PART V.

### OF THE PLACE OF REGISTRATION.

Place for registering documents relating to land.

28. Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), <sup>2</sup>[(d) and (e), section 17, sub-section (2), in so far as such document affects immoveable property,] and section 18, clauses (a), (b), <sup>3</sup>[(c) and (cc)], shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering other documents.

29. (1) Every document <sup>4</sup>[not being a document referred to in section 28 or a copy of a decree or order], may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the <sup>5</sup>[Provincial Government] at which all the persons executing and claiming under the document desire the same to be registered.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Subs. by the Indian Registration (Amendment) Act, 1940 (33 of 1940), s. 3. for "and (d)".

<sup>3</sup> Subs. by s. 3, *ibid.*, for "and (c)".

<sup>4</sup> Subs. by the Repealing and Amending Act, 1940 (32 of 1940), s. 3 and Sch. II, for "other than a document referred to in section 28, and a copy of a decree or order."

<sup>5</sup> Subs. by the A. O. 1937 for "L. G.".

(Part V.—Of the Place of Registration. Part VI.—Of Presenting Documents for Registration.)

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the <sup>1</sup>[Provincial Government] at which all the persons claiming under the decree or order desire the copy to be registered.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him. Registration by Registrars in certain cases.

(2) The Registrar of a district including a Presidency-town <sup>2</sup>\* \* \* may receive and register any document referred to in section 28 without regard to the situation in any part of <sup>3</sup>[the Provinces] of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit : Registration or acceptance for deposit at private residence.

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

## PART VI.

### OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,— Persons to present documents for registration.

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely :— Power-of-attorney recognizable for purposes of section 32.

(a) if the principal at the time of executing the power-of-attorney resides in any part of <sup>3</sup>[the Provinces] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides ;

<sup>1</sup> Subs. by the A. O. 1937 for " L. G. ".

<sup>2</sup> The words " and the Registrar of the Lahore District " rep. by the A. O. 1948

<sup>3</sup> Subs. by the A. O. 1948 for " British India ".

*(Part VI.—Of Presenting Documents for Registration.)*

- (b) if the principal at the time aforesaid resides in any other part of <sup>1</sup>[the Provinces], a power-of-attorney executed before and authenticated by any Magistrate ;
- (c) if the principal at the time aforesaid does not reside in <sup>1</sup>[the Provinces], a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty or of the <sup>2</sup>[Central Government] :

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely :—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;
- (ii) persons who are in jail under civil or criminal process ; and
- (iii) persons exempt by law from personal appearance in Court.

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

34. (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

Enquiry  
before regis-  
tration by  
registering  
officer.

<sup>1</sup> Subs. by the A. O. 1948 for " British India ".

<sup>2</sup> Subs. by the A. O. 1937 for " G. of I. ".

*(Part VI.—Of Presenting Documents for Registration.)*

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed ;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document ; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

35. (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

*Procedure on admission and denial of execution respectively.*

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead :

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII :

(Part VI.—Of Presenting Documents for Registration. Part VII.—Of Enforcing the Appearance of Executants and Witnesses.)

<sup>1</sup>[Provided further that the <sup>2</sup>[Provincial Government] may, by notification in the <sup>3</sup>[Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

## PART VII.

### OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

Procedure where appearance of executant or witness is desired.

36. If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion call upon such officer or Court as the <sup>2</sup>[Provincial Government] directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent; as in the summons may be mentioned, and at a time named therein.

Officer or Court to issue and cause service of summons.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office.

38. (1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

Law as to summonses, commissions and witnesses.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

<sup>1</sup> Ins. by the Indian Registration (Amendment) Act, 1926 (13 of 1926), s. 2.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> Subs. by the A. O. 1937 for "local official Gazette".

(Part VIII.—Of Presenting Wills and Authorities to adopt. Part IX.—  
Of the Deposit of Wills.)

## PART VIII.

### OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration. Persons entitled to present wills and authorities to adopt.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document. Registration of wills and authorities to adopt.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

- (a) that the will or authority was executed by the testator or donor, as the case may be ;
- (b) that the testator or donor is dead ; and
- (c) that the person presenting the will or authority is, under section 40, entitled to present the same.

## PART IX.

### OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document. Deposit of wills.

43. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover. Procedure on deposit of wills.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly. Withdrawal of sealed cover deposited under section 42.

(Part IX.—Of the Deposit of Wills. Part X.—Of the Effects of Registration and Non-registration.)

Proceedings  
on death of  
depositor.

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

Saving of  
certain  
enactments  
and powers  
of Courts.

46. (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865,<sup>1</sup> or of section 81 of the Probate and Administration Act, 1881,<sup>1</sup> or the power of any Court by order X of 1865.  
V of 1881.  
to compel the production of any will.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

## PART X.

### OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Time from  
which  
registered  
document  
operates.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Registered  
documents  
relating to  
property  
when to take  
effect against  
oral agree-  
ments.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession <sup>2</sup>[and the same constitutes a valid transfer under any law for the time being in force :

Provided that a mortgage by deposit or title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.] IV of 1882.

Effect of  
non-registra-  
tion of docu-  
ments  
required to be  
registered.

49. No document required by section 17 <sup>2</sup>[or by any provision of the Transfer of Property Act, 1882,] to be registered shall— IV of 1882.

(a) affect any immoveable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered :

<sup>1</sup> See now the Indian Succession Act, 1925 (39 of 1925).

<sup>2</sup> Ins. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 10.

(Part X.—Of the Effects of Registration and Non-registration. Part XI.—  
Of the Duties and Powers of Registering Officers.)

IV of 1882. <sup>1</sup>[Provided that an unregistered document affecting immoveable  
I of 1877. property and required by this Act or the Transfer of Property Act, 1882,  
IV of 1882. to be registered may be received as evidence of a contract in a suit for  
specific performance under Chapter II of the Specific Relief Act, 1877, or as  
evidence of part performance of a contract for the purposes of section 53A  
of the Transfer of Property Act, 1882, or as evidence of any collateral  
transaction not required to be effected by registered instrument.]

50. (1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Certain registered documents relating to land to take effect against unregistered documents.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

XX of 1866. *Explanation.*—In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

VIII of 1871.  
III of 1877.

## PART XI.

### OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

#### (A) As to the Register-books and Indexes.

51. (1) The following books shall be kept in the several offices herein-after named, namely :—

A—In all registration offices—

Book 1. “Register of non-testamentary documents relating to immoveable property” ;

Book 2, “Record of reasons for refusal to register” ;

Book 3, “Register of wills and authorities to adopt” ; and

Book 4, “Miscellaneous Register” ;

B—In the offices of Registrars—

Book 5, “Register of deposits of wills”.

Register-books to be kept in the several offices.

<sup>1</sup> Ins. by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), s. 10.



*(Part XI.—Of the Duties and Powers of Registering Officers.)*

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

Duties of  
registering  
officers when  
document  
presented.

52. (1) (a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it ;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same ; and

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

Entries to be  
numbered con-  
secutively.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current  
indexes and  
entries  
therein.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books ; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Indexes to  
be made by  
registering  
officers, and  
their contents

55. (1) Four such indexes shall be made in all registration-offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

56. [*Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar and filed.*] *Rep. by the Indian Registration (Amendment) Act, 1929 (XV of 1929), s. 2.*

57. (1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

*(B) As to the Procedure on admitting to Registration.*

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely :—

Particulars to be endorsed on documents admitted to registration.

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent ;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act ; and

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Endorsements  
to be dated  
and signed  
by registering  
officer.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Certificate of  
registration.

60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

Endorsements  
and certificate  
to be copied  
and document  
returned.

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book 1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

Procedure on  
presenting  
document in  
language  
unknown to  
registering  
officer.

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

Power to  
administer  
oaths and  
record of  
substance of  
statements.

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

*(C) Special Duties of Sub-Registrar.*

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure where document relates to land in several sub-districts.

65. (1) Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

Procedure where document relates to land in several districts.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate ; and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

*(D) Special Duties of Registrar.*

66. (1) On registering any non-testamentary document relating to immoveable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure after registration of documents relating to land.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

Procedure  
after regis-  
tration  
under sec-  
tion 30, sub-  
section (2).

67. On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

*(E) Of the Controlling Powers of Registrars and Inspectors-General.*

Power of  
Registrar to  
superintend  
and control  
Sub-  
Registrars

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

Power of  
Inspector-  
General to  
superintend  
registration  
offices and  
make rules

69. (1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the <sup>1</sup>[Provincial Government], and shall have power from time to time to make rules consistent with this Act—

(a) providing for the safe custody of books, papers and documents  
2\* \* \* \* \*

(b) declaring what languages shall be deemed to be commonly used in each district ;

(c) declaring what territorial divisions shall be recognized under section 21 ;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively ;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63 ;

(f) regulating the form in which registering officers are to make memoranda of documents ;

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

(h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively ;

(i) declaring the holidays that shall be observed in the registration-offices ; and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> The words "and also for the destruction of such books, papers and documents as need no longer be kept" rep. by the Destruction of Records Act, 1917 (5 of 1917), s. 6 and Sch.

(Part XI.—Of the Duties and Powers of Registering Officers. Part XII.—Of Refusal to Register.)

(2) The rules so made shall be submitted to the <sup>1</sup>[Provincial Government] for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.<sup>2</sup>

Power of  
Inspector-  
General to  
remit fines

## PART XII.

### OF REFUSAL TO REGISTER.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document ; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

Reasons for  
refusal to  
register to  
be recorded

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order ; and the Registrar may reverse or alter such order.

Appeal to  
Registrar from  
orders of Sub-  
Registrar re-  
fusing registra-  
tion on ground  
other than  
denial of  
execution.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60 ; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

<sup>1</sup> Subs. by the A. O. 1937 for " L. G. ".

<sup>2</sup> For Part XIA (comprising ss. 70A to 70D) : Of the Copying of Documents by means of Photography, applicable to Bombay only, see the Indian Registration (Bombay Amendment) Act, 1930 (Bom. 17 of 1930), s. 3. For the subs. s. 70B, see the Indian Registration (Bombay Amendment) Act, 1938 (Bom. 24 of 1938), s. 5 ; and for s. 70E, see s. 7, *ibid.*

*(Part XII.—Of Refusal to Register.)*

Application  
to Registrar  
where Sub-  
Registrar  
refuses to  
register on  
ground of  
denial of  
execution

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

Procedure of  
Registrar on  
such applica-  
tion

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Order by  
Registrar to  
register and  
procedure  
thereon.

75. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

\* V of 1908.

Order of  
refusal by  
Registrar.

76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

(Part XII.—Of Refusal to Register. Part XIII.—Of the Fees for Registration, Searches and Copies.)

shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree. Suit in case of order of refusal by registrar.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

## PART XIII.

### OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. <sup>1</sup>\* \* \* The <sup>2</sup>[Provincial Government] shall prepare a table of fees payable— Fees to be fixed by Provincial Government.
- (a) for the registration of documents ;
  - (b) for searching the registers ;
  - (c) for making or granting copies of reasons, entries or documents, before, on or after registration ;
- and of extra or additional fees payable—
- (d) for every registration under section 30 ;
  - (e) for the issue of commissions ;
  - (f) for filing translations ;
  - (g) for attending at private residences ;
  - (h) for the safe custody and return of documents ; and
  - (i) for such other matters as appear to the <sup>3</sup>[Provincial Government] necessary to effect the purposes of this Act.

<sup>1</sup> The words " Subject to the control of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s 2 and Sch. I. The word "control" had been subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, for "approval".

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".



(Part XIII.—Of the Fees for Registration, Searches and Copies. Part XIV.—Of Penalties.)

Publication of fees.

79. A table of the fees so payable shall be published in the Official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office.

Fees payable on presentation.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.<sup>1</sup>

## PART XIV.

### OF PENALTIES.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both. XLV of 1860.

Penalty for making false statements, delivering false copies or translations, false personation, and abetment.

82. Whoever—

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act ; or
- (b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ; or
- (c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ; or
- (d) abets anything made punishable by this Act ;

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.<sup>1</sup>

Registering officer may commence prosecutions.

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, \* \* \* the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

<sup>1</sup> For Part XIII-A, comprising ss. 80A to 80G, and for s. 82A, applicable to Bengal only, see the Bengal Touts Act, 1942 (Ben. 5 of 1942), ss. 9 and 10.

<sup>2</sup> The words "the Branch Inspector-General of Sindh" rep. by the A. O. 1937.

## (Part XIV.—Of Penalties. Part XV.—Miscellaneous.)

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

XLV of 1860.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Registering officers to be deemed public servants.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

XLV of 1860

(3) In section 228 of the Indian Penal Code, the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

## PART XV.

## MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

Destruction of unclaimed documents.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Nothing so done invalidated by defect in appointment or procedure.

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

Registration of documents executed by Government officers or certain public functionaries.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order to the registering officer

Copies of certain orders,

XIX of 1883.

*(Part XV.—Miscellaneous.)*

certificates  
and instru-  
ments to be  
sent to regis-  
tering officers  
and filed.

within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate V of 1908. to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1. XII of 1884.

(4) Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

*Exemptions from Act.*

Exemption of  
certain docu-  
ments executed  
by or in favour  
of Govern-  
ment.

90. (1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repeal- III of 1877. ed, shall be deemed to require, or to have at any time required, the VIII of 1871 registration of any of the following documents or maps, namely:—

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement ; or
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey ; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records ; or
- (d) sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land ; or

(Part XV.—Miscellaneous. The Schedule.—Repeal of Enactments.)

1909: Act III.]

Presidency-towns Insolvency.

Bom.  
V of 1879

(e) notices given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, or relinquishment of occupancy by occupants or of alienated land by holders of such land.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the <sup>1</sup>[Provincial Government] prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies. Inspection and copies of such documents.

92. [*Burmese registration-rules confirmed.*] *Rep by the A. O 1937*  
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93. [*Repeals.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

*THE SCHEDULE.*—[*Repeal of Enactments.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch*

## THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909.

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ACT No. III OF 1909.<sup>1</sup>

[12th March, 1909.]

An Act to amend the Law of Insolvency in the Presidency-towns <sup>2\*</sup> \*

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns <sup>3\*</sup> \* \*; It is hereby enacted as follows:—

## PRELIMINARY.

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909.

(2) It shall come into force on the first day of January 1910.

Short title  
and com-  
mencement.

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<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 275 ; for Report of Select Committee, see *ibid.*, 1909, Pt. V, page 3 ; and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, pages 41 and 182, and *ibid.*, 1909, Pt. VI, pages 12 and 22. The Act has been amended in Bombay by Bom. Acts 20 of 1933 and 15 of 1939 ; in Bengal by Ben. Act 18 of 1936 ; and in Madras by Mad. Act 5 of 1943.

<sup>2</sup> The words " and the town of Rangoon " rep. by the A. O. 1937.

<sup>3</sup> The words " and the town of Karachi " rep. by the A. O. 1948. The words " towns of Rangoon and Karachi " had been subs. for " town of Rangoon " by the Insolvency (Amendment) Act, 1926 (9 of 1926), s. 2, and the words " town of " had been subs. for " towns of Rangoon and " by the A. O. 1937.

(Preliminary. Part I.—Constitution and Powers of Court.)

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "creditor" includes a decree-holder ;
  - (b) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor ;
- 1\*                \*                \*                \*                \*                \*
- (c) "official assignee" includes an acting official assignee <sup>2</sup>[and a deputy official assignee, whether permanent or acting] ;
  - (d) "prescribed" means prescribed by rules ;
  - (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ;
  - (f) "rules" means rules made under this Act ;
  - (g) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land ;
  - (h) "the Court" means the Court exercising jurisdiction under this Act ; and
  - (i) "transfer of property" includes a transfer of any interest therein and any charge created thereon.

## PART I.

## CONSTITUTION AND POWERS OF COURT.

*Jurisdiction.*

3. The Courts having jurisdiction in insolvency under this Act shall be <sup>the High Courts at Calcutta, Madras and Bombay</sup>. Courts having jurisdiction in

4. All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice \* \* \* shall, from time to time, assign a Judge for that purpose.

5. Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction.

<sup>1</sup> Cls. (bb) and (bbb), ins. by the Insolvency (Amendment) Act, 1926 (9 of 1926), s. 3, were rep. by the A. O. 1948.

<sup>2</sup> Ins. by the Insolvency Law (Amendment) Act, 1930 (10 of 1930), s. 2.

<sup>3</sup> Subs. by the A. O. 1948 for the original cls. (a) and (b) as amended by the Insolvency (Amendment) Act, 1926 (9 of 1926), s. 4 and the A. O. 1937.

4 The words "or Judicial Commissioner" rep. by the A. O. 1948. The words "Judicial Commissioner" had been subs. by the Insolvency (Amendment) Act, 1926 (9 of 1926), s. 5, for "Chief Judge".

## (Part I.—Constitution and Powers of Court.)

Delegation  
of powers to  
officers of  
Court.

6. (1) The Chief Justice <sup>1</sup> \* \* may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court.

(2) The powers referred to in sub-section (1) are the following, namely:—

- (a) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;
- (b) to hold the public examination of insolvents;
- (c) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers;
- (d) to hear and determine any unopposed or *ex-parte* application;
- (e) to examine any person summoned by the Court under section 36.

(3) An officer appointed under this section shall not have power to commit for contempt of Court.

Power of  
Court to  
decide all  
questions  
arising in  
insolvency.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

<sup>2</sup>[Provided that, unless all the parties otherwise agree, the power hereby given shall, for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section.]

*Appeals.*

Appeals in  
insolvency.

8. (1) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely:—

- (a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge;

<sup>1</sup> The words "or Judicial Commissioner" rep. by the A. O. 1948. The words "Judicial Commissioner" had been subs. by the Insolvency (Amendment) Act, 1926 (9 of 1926), s. 6, for "Chief Judge".

<sup>2</sup> Ins. by the Presidency-towns Insolvency (Amendment) Act, 1927 (19 of 1927), s. 2.

(Part I.—Constitution and Powers of Court. Part II.—Proceedings from Act of Insolvency to Discharge.)

- (b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

## PART II.

### PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

#### *Acts of insolvency.*

9. A debtor commits an act of insolvency in each of the following <sup>Acts of</sup> insolvency cases, namely:—

- (a) if, in <sup>1</sup>[the Provinces] or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
- (b) if, in <sup>1</sup>[the Provinces] or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
- (c) if, in <sup>1</sup>[the Provinces] or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- (d) if, with intent to defeat or delay his creditors,—
  - (i) he departs or remains out of <sup>1</sup>[the Provinces],
  - (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself;
  - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;
- (e) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money;
- (f) if he petitions to be adjudged an insolvent;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.<sup>2</sup>

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> For cl. (i) and the proviso, applicable to Bombay only, see the Presidency-towns Insolvency and the Provincial Insolvency (Bombay Amendment) Act, 1939 (Bom. 15 of 1939), s. 2.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

*Explanation.*—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.<sup>1</sup>

*Order of adjudication.*

Power to  
adjudicate.

10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

*Explanation.*—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Restrictions  
on jurisdic-  
tion.

11. The Court shall not have jurisdiction to make an order of adjudication, unless—

- (a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or
- (b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court; or
- (c) the debtor personally works for gain within those limits; or
- (d) in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

Conditions  
on which  
creditor may  
petition.

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

<sup>1</sup> For s. 9A, applicable to Bombay only, see the Presidency-towns Insolvency and the Provincial Insolvency (Bombay Amendment) Act, 1939 (Bom. 15 of 1939), s. 2

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

13. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts. Proceedings  
and order on  
creditor's  
petition.

(2) At the hearing the Court shall require proof of—

(a) the debt of the petitioning creditor, and

(b) the act of insolvency, or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(3) The Court may adjourn the hearing of the petition and order service thereof on the debtor.

(4) The Court shall dismiss the petition—

(a) if it is not satisfied with the proof of the facts referred to in sub-section (2); or

(b) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made.

(5) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (3) the debtor does not appear and service of the petition on him is proved, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(6) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(7) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions  
on which  
debtor may  
petition.

14. <sup>1</sup>[(1)] A debtor shall not be entitled to present an insolvency petition unless—

- (a) his debts amount to five hundred rupees, or
- (b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or
- (c) an order of attachment in execution of such a decree has been made and is subsisting against his property.

<sup>2</sup>[(2)] A debtor in respect of whom an order of adjudication, whether made under this Act or under the Provincial Insolvency Act, 1920, has been annulled owing to his failure to apply or to prosecute an application for his discharge shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.] V of 1920.

Proceedings  
and order  
on debtor's  
petition.

15. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

<sup>3</sup>[(3)] On the making of the order admitting his petition, a debtor shall—

- (a) unless the Court otherwise directs, produce all his books of account, and
- (b) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed, failing which the Court may dismiss his petition.]

Discretionary  
powers as to  
appointment  
of interim  
receiver.

16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof,

<sup>1</sup> The original s. 14 was re-numbered as sub-section (1) of that section by the Insolvency (Amendment) Act, 1927 (11 of 1927), s. 2.

<sup>2</sup> Ins. by s. 2, *ibid.*

<sup>3</sup> Ins. by the Presidency-towns Insolvency (Amendment) Act, 1927 (19 of 1927), s. 3.

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V of 1908.

and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as may be prescribed.

17. On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose: Effect of order of adjudication

Provided that this section shall not affect the power of any secured creditors to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

18. (1) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court. Stay of proceedings.

(2) An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

(3) Any Court in which proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

<sup>1</sup>[18A. (1) The Court may, at any time after the presentation of an insolvency petition, stay any insolvency proceedings pending against the debtor in any Court subject to the superintendence of the Court, and may, at any time after the making of an order of adjudication, annul an adjudication against the debtor made by any such Court. Control over insolvency proceedings in subordinate Courts.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made and all acts done by the Court whose order is annulled, or by the receiver appointed by it or other person acting under his authority, shall be valid, but the property vested in such Court or receiver shall vest in the official assignee, and the Court may make such direction in regard to the custody of such property as it thinks fit.

<sup>1</sup> Ins. by the Insolvency Law (Amendment) Act, 1930 (10 of 1930), s. 3.



*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(3) Notice of the order annulling an adjudication under sub-section (1) shall be published in the <sup>1</sup>[Official Gazette] and in such other manner as may be prescribed.]

Power to  
appoint  
special  
manager

19. (1) If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the official assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee as may be entrusted to him by the official assignee or as the Court may direct.

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.

Advertisement  
of order of  
adjudication.

20. Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition, shall be published <sup>2</sup>\* \* \* in the <sup>1</sup>[Official Gazette] and in such other manner as may be prescribed.

*Annulment of adjudication.*

Power for  
Court to  
annul adjudi-  
cation in  
certain cases.

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication <sup>3</sup>[and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 14, not entitled to present such petition].

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Concurrent  
proceedings  
in British  
Courts.

22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court whether within or without <sup>4</sup>[the Provinces] against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.

<sup>1</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>2</sup> The words "in the Gazette of India and" rep. by the A. O. 1937.

<sup>3</sup> Ins. by the Insolvency (Amendment) Act, 1927 (11 of 1927), s. 3.

<sup>4</sup> Subs. by the A. O. 1948 for "British India".

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

23. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order.

Proceedings  
on annul-  
ment.

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such recommitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(3) Notice of the order annulling an adjudication shall be published \* \* \* in the <sup>2</sup>[Official Gazette] and in such other manner as may be prescribed.

*Proceedings consequent on order of adjudication.*

24. (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed.

Insolvent's  
schedule.

(2) The schedule shall be so submitted within the following times, namely:—

(a) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(b) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

25. (1) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.

Protection  
order.

<sup>1</sup> The words "in the Gazette of India and" rep. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1937 for "local official Gazette".

(Part II.—Proceedings from Act of Insolvency to Discharge.)

(2) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release:

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be *prima facie* entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act.

(5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

Meetings of  
creditors.

26. (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the mode of dealing with the property of the insolvent.

(2) With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed.

Public exa-  
mination of  
the insolvent.

27. (1) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

(4) The official assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(5) The Court may put such questions to the insolvent as it may think expedient.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(6) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times.

(7) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(8) Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner and at such place as to the Court seems expedient.

*Composition and schemes of arrangement.*

28. (1) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors. Submission of proposal and acceptance by creditors.

(2) The official assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

29. (1) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved. Approval of proposal by Court.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(2) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(3) The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(4) Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

Order on  
approval.

30. (1) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency.

(2) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

Power to  
re-adjudge  
debtor  
insolvent.

31. (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

duly made or of anything duly done under or in pursuance of the composition or scheme.

(2) Where a debtor is re-adjudged insolvent under sub-section (1), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

32. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

*Limitation of effect of composition or scheme.*

*Control over person and property of insolvent.*

33. (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit, to such examination and give such information as the meeting may require.

*Duties of insolvent as to discovery and realization of property.*

(2) The insolvent shall—

- (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
- (b) submit to such examination in respect of his property or his creditors,
- (c) wait at such times and places on the official assignee or special manager,
- (d) execute such powers-of-attorney, transfers and instruments, and
- (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

Arrest of  
insolvent.

34. (1) The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison or if in prison to be detained until such time as the Court may order, under the following circumstances, namely:—

(a) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him ; or

(b) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his insolvency ; or

(c) if he removes any property in his possession above the value of fifty rupees without the leave of the official assignee.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

Redirection  
of letters.

35. Where the official assignee has been appointed interim receiver or an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels and money orders addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, or delivered by the Postal authorities in <sup>1</sup>[the Provinces], to the official assignee, or, otherwise as the Court directs ; and the same shall be done accordingly.

Discovery of  
insolvent's  
property.

36. (1) The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property ; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

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<sup>1</sup> Subs. by the A. O. 1948 for " British India ".

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

(4) <sup>1</sup>[If on his examination any such person admits] that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) <sup>1</sup>[If on his examination any such person admits] that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

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(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908, respectively.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property.

V of 1908.

37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908. Power to issue commissions.

*Discharge of Insolvent.*

38. (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court. Discharge of insolvent.

<sup>1</sup> Subs. by the Presidency-towns Insolvency (Amendment) Act, 1927 (19 of 1927), s. 4, for "If on the examination of any such person the Court is satisfied".



*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(2) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may—

- (a) grant or refuse an absolute order of discharge, or
- (b) suspend the operation of the order for a specified time, or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

Cases in which the Court must refuse an absolute discharge.

39. (1) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code, and shall, on proof of any of the facts hereinafter mentioned, either— XLV of 1860

- (a) refuse the discharge; or
  - (b) suspend the discharge for a specified time; or
  - (c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors; or
  - (d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.
- (2) The facts hereinbefore referred to are—
- (a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible ;
  - (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;
  - (c) that the insolvent has continued to trade after knowing himself to be insolvent ;

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

- (d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities ;
- (f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs ;
- (g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him ;
- (h) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit ;
- (i) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors ;
- (j) that the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust.

(3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(4) On any application for discharge the report of the official assignee shall be *prima facie* evidence and the Court may presume the correctness of any statement contained therein.

40. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing, the Court may put such questions to the insolvent and receive such evidence as it may think fit.

Hearing of application for discharge.

41. If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

Power to annul adjudication on failure to apply for discharge.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

Renewal of application and variation of terms of order.

42. (1) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

(2) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

Duty of discharged insolvent to assist in realization of property.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court ; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

44. In either of the following cases, that is to say :—

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement ; or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife) ;

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

Effect of order of discharge.

45. (1) An order of discharge shall not release the insolvent from—

(a) any debt due to the Crown ;

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party ; or

(d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898.

(Part II.—*Proceedings from Act of Insolvency to Discharge.* Part III.—*Administration of Property.*)

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable in insolvency.

(3) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein.

(4) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

### PART III.

#### ADMINISTRATION OF PROPERTY.

##### *Proof of debts.*

46. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency. Debts provable in insolvency.

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

(4) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value :

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

*Explanation.*—For the purposes of this section “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money or money’s worth, whether the payment is, as respects amount, fixed or unliquidated ; as

*(Part III.—Administration of Property.)*

respects time, present or future, certain or dependent on any contingency or contingencies ; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Mutual deal-  
ings and  
set-off

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively :

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

Rules as to  
proof of  
debts

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

Priority of  
debts

49. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

- (a) all debts due to the Crown or to any local authority ;
- (b) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer ; and
- (c) rent due to a landlord from the insolvent : provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property ; and where there is a surplus of the partnership property, it

*(Part III.—Administration of Property.)*

shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

50. After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent. Rent due before adjudication.

*Property available for payment of debts.*

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at— Relation of assignee's title

(a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or

(b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

52. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely:— Description of insolvent's property divisible amongst creditors.

(a) property held by the insolvent on trust for any other person;

(b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels, and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.

(2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely:—

(a) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge;

## (Part III.—Administration of Property.)

- (b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and
- (c) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c):

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

*Effect of insolvency on antecedent transactions.*

Restriction  
of rights of  
creditor  
under  
execution.

53. (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

Duties of  
Court  
executing  
decree as to  
property  
taken in  
execution.

54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance  
of voluntary  
transfer.

55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

*(Part III.—Administration of Property.)*

56. (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee.

Avoidance of preference in certain cases.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

Protection of bona fide transactions.

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration; or
- (d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

*Realization of property.*

58. (1) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery.

Possession of property by official assignee.

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908, and the Court may on his application enforce such acquisition or retention accordingly.

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.



*(Part III.—Administration of Property.)*

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

Seizure of  
property of  
insolvent.

59. (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid who may execute it according to its tenor.

Appropriation of  
portion of  
pay or other  
income to  
creditors.

60. (1) Where an insolvent is an officer of the Army or Navy or of <sup>1</sup>[the Royal Indian Navy], or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

Vesting and  
transfer of  
property

<sup>2</sup>61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

Disclaimer  
of onerous  
property.

62. (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have

<sup>1</sup> Subs. by the A. O. 1937 for " His Majesty's Royal Indian Marine Service ".

<sup>2</sup> In the application of the Act to Bombay and Madras, this section has been repealed: *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 11 and Sch. I and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 2.

*(Part III.—Administration of Property.)*

endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

63. Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

Disclaimer of leaseholds.

64. The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Power to call on official assignee to disclaim.

65. The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

Power for Court to rescind contract.

*(Part III.—Administration of Property.)*

Power for Court to make vesting order in respect of disclaimed property.

66. (1) The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Provided always, that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

Persons injured by disclaimer may prove.

67. Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of injury, and may accordingly prove the same as a debt under the insolvency.

Duty and powers of official assignee as to realization.

68. (1) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

(a) sell all or any part of the property of the insolvent;

(b) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely:—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;

*(Part III.—Administration of Property.)*

- (d) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;
- (e) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court;
- (f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time or fully paid shares, debentures or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;
- (g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business;
- (h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon;
- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

<sup>1</sup>(2) The official assignee shall account to the Court and pay over all monies and deal with all securities in such manner<sup>2</sup> as is prescribed or as the Court directs.

*Distribution of property.*

69. (1) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. Declaration and distribution of dividends.

(2) The first dividend (if any) shall be declared and be distributed within <sup>3</sup>[one year] after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

<sup>1</sup> In the application of the Act to Bombay, this sub-section has been repealed: see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 11 and Sch. I.

<sup>2</sup> For Madras, the words "as is laid down in this Act or" have been ins. here by the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 3.

<sup>3</sup> Subs. by the Presidency-towns Insolvency (Amendment) Act, 1929 (3 of 1929), s. 2, for 'six months'.

*(Part III.—Administration of Property.)*

(5) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

Joint and  
separate  
properties

70. Where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

Calculation  
of dividends

71. (1) In the calculation and distribution of dividends, the official assignee shall retain <sup>1</sup>[in his hands] sufficient assets to meet—

- (a) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;
- (b) debts provable in insolvency the subject of claims not yet determined;
- (c) disputed proofs or claims; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money <sup>2</sup>[in hand] shall be distributed as dividends.

Right of  
creditor who  
has not  
proved debt  
before declara-  
tion of a  
dividend

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being <sup>3</sup>[in the hands] of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final  
dividend.

73. (1) When the official assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

<sup>1</sup> For Madras, read: "under his control"—see the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 4.

<sup>2</sup> For Madras, read: "realized by the official assignee"—see s. 4, *ibid.*

<sup>3</sup> For Madras, read: "under the control"—see s. 5, *ibid.*

*(Part III.—Administration of Property. Part IV.—Official Assignees.)*

174. No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

No suit for dividend.

75. (1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

76. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.

Right of insolvent to surplus.

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## PART IV.

### OFFICIAL ASSIGNEES.

77. <sup>2</sup>[(1) (a) The Chief Justice of the High Court at Madras may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvents' estates and such person or persons as he thinks fit to the office of the deputy official assignee for the said Court and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding any of the said offices for any cause appearing to the Court sufficient.

Appointment and removal of official assignees of insolvent's estate.

(b) The Provincial Government of <sup>3</sup>[West Bengal] shall, after consultation with, and with the concurrence of, the Chief Justice of the High

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<sup>1</sup> S. 74 has been amended in its application to Bombay and Madras by the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 2 and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 6.

<sup>2</sup> Subs. by the A. O. 1937 for the original sub-section (1) as amended by the Insolvency (Amendment) Act, 1926 (9 of 1926), s. 7, and the Insolvency Law (Amendment) Act, 1930 (10 of 1930), s. 4. In its application to Calcutta, s. 77 had been previously amended by the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s. 3. In its application to Madras, this section has been amended by Madras Act 5 of 1943, s. 7.

<sup>3</sup> Subs. by the A. O. 1948 for "Bengal".

## (Part IV.—Official Assignees.)

Court at Calcutta, appoint substantively or temporarily a person to the office of official assignee of insolvents' estates for the said Court and may, after the like consultation and with the like concurrence, appoint substantively or temporarily a person or persons to the office of the deputy official assignee for the said Court.

(c) For the High Court at Bombay, the Provincial Government of Bombay <sup>1</sup>\* \* \* may from time to time appoint substantively or temporarily such person as the Provincial Government thinks fit to the office of official assignee of insolvents' estates and such person or persons as the Provincial Government thinks fit to the office of the deputy official assignee.]

<sup>2</sup>[(1A) Subject to rules made under section 112,<sup>3</sup> the deputy official assignee shall have all the powers and shall discharge all the duties and in exercise of such powers and in the discharge of such duties shall be subject to all the liabilities of the official assignee under this Act.]

(2) Every official assignee <sup>2</sup>[and every deputy official assignee] shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed.

<sup>4</sup>(3) Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay respectively under the "Indian Insolvency Act, 1848," \* \* \* shall, without further appointment <sup>11 & 12</sup> for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay <sup>7</sup>\* \* \* respectively.<sup>5</sup> Vict., c. 21.

Power to administer oath.

Duties as regards the insolvent's conduct.

78. An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

79. (1) The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(2) In particular it shall be the duty of the official assignee—

(a) to investigate the conduct of the insolvent and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act

<sup>1</sup> The words "and for the Court of the Judicial Commissioner of Sind, the Provincial Government of Sind" rep. by the A. O. 1948.

<sup>2</sup> Ins. by the Insolvency Law (Amendment) Act, 1930 (10 of 1930), s. 4.

<sup>3</sup> In Calcutta read "112A" for "112": see the Presidency-towns Insolvency (Ben. Amendment) Act, 1936 (Ben. 18 of 1936), s. 3 (b).

<sup>4</sup> This sub-section has been replaced by another in Calcutta: see *ibid.*, s. 3 (c).

<sup>5</sup> Rep. by this Act.

<sup>6</sup> The words "and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900" rep. by the A. O. 1937.

<sup>7</sup> The words "and in the Chief Court of Lower Burma" rep. by the A. O. 1937.

<sup>8</sup> For s. 77A, applicable to Bombay and Madras, see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 3 and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 8.

## (Part IV.—Official Assignees.)

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1860.

which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code in connection with his insolvency or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

(b) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed; and

(c) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

80. The official assignee shall, whenever required by any creditor so to do and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors. Duty to furnish list of creditors

81. (1) Such remuneration shall be paid to the official assignee as may be prescribed. Remuneration.

(2) No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such.<sup>1</sup>

82. The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.<sup>1</sup> Misfeasance.

83. The official assignee may sue and be sued by the name of "the official assignee of the property of \_\_\_\_\_, an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office. Name under which to sue or be sued.

84. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.<sup>1</sup> Office vacated by insolvency.

<sup>1</sup> In the application of the Act to Madras, ss. 81 and 83 have been repealed: see the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), ss. 9 and 12. In the application of the Act to Bombay, s. 84 has been repealed: see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 11. For ss. 81, 81B, 82, 82A, 82B, 82C and 84A, as applicable to Calcutta, see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), ss. 4 to 7. For ss. 82 and 83, as applicable to Bombay, see Bombay Act 20 of 1933, ss. 4 and 5. For ss. 82, 82A, 82B, 84 and 84A, as applicable to Madras, see Madras Act 5 of 1943, ss. 11 and 14.



*(Part IV.—Official Assignees. Part V.—Committee of Inspection.)*

Discretionary  
powers and  
control thereof.

85. (1) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(2) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(3) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to  
Court.

86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may appeal to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

Control of  
Court.

87. (1) If any official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

<sup>1</sup>(3) The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

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## PART V.

### COMMITTEE OF INSPECTION.

Committee  
of inspection.

88. The Court may, if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection

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<sup>1</sup> In the application of the Act to Bombay, this sub-section has been repealed: see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 11 and Sch. I.

## (Part V.—Committee of Inspection. Part VI.—Procedure.)

for the purpose of superintending the administration of the insolvent's property by the official assignee:

Provided that a creditor, who is appointed a member of a committee of inspection, shall not be qualified to act until he has proved.

89. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

Control of  
committee  
of inspection  
over official  
assignee.

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## PART VI.

### PROCEDURE.

90. (1) In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction:

Powers of  
the Court

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

(2) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(5) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(6) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *vivâ voce* or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

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<sup>1</sup> Sub-section (8) rep by the A. O. 1948.

*(Part VI—Procedure.)*

Consolidation  
of petitions.

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

Power to  
change  
carriage of  
petition.

92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance  
of proceed-  
ings on death  
of debtor.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Power to  
stay pro-  
ceedings.

94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

Power to  
present peti-  
tion against  
a partner.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

Power to dis-  
miss petition  
against some  
respondents  
only.

96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Separate  
insolvency  
petitions  
against  
partners.

97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Suits by  
official as-  
signee and  
insolvent's  
partners.

98. (1) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

(2) Where application for authority to continue or commence any suit or any other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

Proceedings  
in partner-  
ship name.

99. (1) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm:

(Part VI.—Procedure. Part VII.—Limitation. Part VIII.—Penalties.)

Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

(2) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

100. (1) A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure, 1898, may be executed. Warrants of Insolvency Courts.

V of 1898

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1) shall be in the form prescribed, and sections 77 (2), 79, 82, 83, 84 and 102 of the said Code shall, so far as may be, apply to the execution of such warrant.

(3) A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

## PART VII.

### LIMITATION.

101. The period of limitation for an appeal from any act or decision of the official assignee, or from an order made by an officer of the Court empowered under section 6, shall be twenty days from the date of such act, decision or order, as the case may be.<sup>1</sup> Limitation of appeals.

## PART VIII.

### PENALTIES.

102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine or with both. Undischarged insolvent obtaining credit.

103. Any person adjudged insolvent who—

- (a) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act,—
- (i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

Punishment of insolvent for certain offences.

<sup>1</sup> For s. 101A, applicable to Bombay only, see the Presidency-towns Insolvency (Bombay Amendment) Act, 1939 (Bom. 15 of 1939), s. 2.

*(Part VIII.—Penalties.)*

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from, or wilfully altered or falsified, any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(b) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of what kind soever,

shall on conviction be punishable with imprisonment for a term which may extend to two years.

Disqualifica-  
tions of  
insolvent

<sup>1</sup>[103A. (1) Where a debtor is adjudged or readjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from—

(a) being appointed or acting as a Magistrate;

(b) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached; and

(c) being elected or sitting or voting as a member of any local authority.

(2) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

(a) the order of adjudication is annulled under sub-section (1) of section 21, or

(b) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit.]

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<sup>1</sup> S. 103A ins. by the Presidency-towns Insolvency (Amendment) Act, 1920 (11 of 1920), s. 2.

*(Part VIII.—Penalties. Part IX.—Small Insolvencies.)*

<sup>1</sup>[104. (1) Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 103 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Presidency Magistrate or a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898.

V of 1898.

(2) Any complaint made by the Court under sub-section (1) may be signed by such officer of the Court as the Court may appoint in this behalf.]

105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Criminal liability after discharge or composition.

## PART IX.

## SMALL INSOLVENCIES.

106. (1) Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

Summary administration in small cases.

- (a) no appeal shall lie from any order of the Court, except by leave of the Court;
- (b) no examination of the insolvent shall be held except on the application of a creditor or the official assignee;
- (c) the estate shall, where practicable, be distributed in a single dividend ;
- (d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(2) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

<sup>1</sup> Subs. by the Insolvency (Amendment) Act, 1926 (9 of 1926), s 9, for the original s. 104.

(Part X.—*Special Provisions.*)

## PART X.

## SPECIAL PROVISIONS.

Exemption  
of corpora-  
tion, etc.,  
from insol-  
vency pro-  
ceedings

107. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Administra-  
tion in insol-  
vency of  
estate of  
person  
dying  
insolvent.

108. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the state of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

Vesting of  
estate and  
mode of  
administra-  
tion.

109. (1) Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(2) With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the

(Part X.—*Special Provisions.* Part XI.—*Rules.*)

debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of the deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. (1) After notice of the presentation of a petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee. Payments or transfer by legal representatives.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator General's Act, 1874, before the date of the order for administration.

II of 1874.

111. The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General. Savings of jurisdiction of Administrator-General.

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## PART XI.

### RULES.

112. (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

- (a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;
- (b) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;

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<sup>1</sup> This section has been amended in its application to Bombay, Madras and Calcutta: *see* the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 6, the Presidency-towns Insolvency (Bombay Amendment) Act, 1939 (Bom. 15 of 1939), s. 2, the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 15, and the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s. 8.



## (Part XI.—Rules.)

- (c) the proceedings of the official assignee in taking possession of and realising the estates of insolvent debtors;

1\*            \*            \*            \*            \*            \*            \*

- (e) the receipts, payments and accounts of the official assignee;
- (f) the audit of the accounts of the official assignee;
- (g) the payment <sup>2\*</sup> \* \* of the costs of the audit of his accounts out of the proceeds of the investments in his hands;
- (h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;
- (i) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court;
- (j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
- (k) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates;
- <sup>3</sup>[(*kk*) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor;]
- (l) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors;
- (m) the service of notices in proceedings under this Act;
- (n) the appointment, meetings and procedure of committees of inspection;
- (o) the conduct of proceedings under this Act in the name of a firm;
- (p) the forms to be used in proceedings under this Act;
- (q) the procedure to be followed in the case of estates to be administered in a summary manner;
- (r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act ;
- <sup>4</sup>[(s) the distribution of work between the official assignee and his deputy or deputies;]

<sup>5</sup>[and, in the case of the High Court at Madras, may also provide for and regulate the remuneration of the official assignee and the payment of the costs, charges and expenses of his establishment].<sup>6</sup>

<sup>1</sup> Cl. (d) rep. by the A. O. 1937.

<sup>2</sup> The words "of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and" rep. by the A. O. 1937.

<sup>3</sup> Ins. by the Presidency-towns Insolvency (Amendment) Act, 1927 (19 of 1927), s. 5.

<sup>4</sup> Ins. by the Insolvency Law (Amendment) Act, 1930 (10 of 1930), s. 5.

<sup>5</sup> Ins. by the A. O. 1937.

<sup>6</sup> For s. 112A, applicable to Calcutta only, see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s. 9. . . .

## (Part XI.—Rules. Part XII.—Supplemental.)

<sup>1</sup>[113. Rules made under the provisions of this Part shall be subject to the previous sanction of the Provincial Government.] Sanction to rules.

114. Rules so made and sanctioned shall be published <sup>2</sup>\* \* \* in the <sup>3</sup>[Official Gazette], <sup>4</sup>\* \* \* and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act. Publication of rules.

## PART XII.

## SUPPLEMENTAL.

115. (1) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever. Exemption from duty of transfers, etc., under this Act.

(2) No stamp-duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. (1) A copy of the Official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice. The Gazette to be evidence.

(2) A copy of the Official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn— Swearing of affidavits.

(a) in <sup>5</sup>[the Provinces of India], before—

(i) any Court or Magistrate, or

(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908;

(b) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a

<sup>1</sup> Subs. by the A. O. 1937 for the original s. 113.

<sup>2</sup> The words "in the Gazette of India or" rep. by the A. O. 1937.

<sup>3</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>4</sup> The words "as the case may be" rep. by the A. O. 1937.

<sup>5</sup> Subs. by the A. O. 1948 for "British India".

## (Part XII.—Supplemental.)

Bankruptcy Court authorized in writing in that behalf by the Judge of the Court or before a Justice of the Peace for the county or place where it is sworn;

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and

(d) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public).

Formal defect not to invalidate proceedings

118. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

Application of Trustee Act to insolvency of trustee.

119. Where an insolvent is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

XXVII of 1866.

Certain provisions to bind the Crown.

120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Savings for existing rights of audience.

121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.<sup>1</sup>

Lapse and credit to Government of unclaimed dividends.

<sup>2</sup>122. Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of <sup>3</sup>[the Provincial Government], unless the Court otherwise directs.

<sup>1</sup> For s. 121A, applicable to Bombay only, see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 7.

<sup>2</sup> This section has been amended in its application to Bombay by s. 8, *ibid*.

<sup>3</sup> Subs. by the A. O. 1937, for "the G. of I.",

## (Part XII.--Supplemental.)

123. Any person claiming to be entitled to any monies paid to the account and credit of <sup>1</sup>[the Provincial Government] under section 122, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

Claims to monies credited to Government under section 122.

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of <sup>1</sup>[the Provincial Government], the Court shall cause a notice to be served on such officer as <sup>2</sup>[the Provincial Government] may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.<sup>3</sup>

124. (1) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon.

Access to insolvent's books.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

125. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.<sup>4</sup>

Fees and percentages.

126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883, and to section 50 of the Provincial Insolvency Act, 1907.<sup>5</sup>

Courts to be auxiliary to each other.

46 and 47  
Vict., c. 52.  
III of 1907.

127.   6\*                   \*                   \*                   \*                   \*                   \*

(2)   6\*           \*           \*           \*   The proceedings under an insolvency petition under the Indian Insolvency Act, 1848, pending at the commencement of this Act shall, except so far as any provisions of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

Saving.

11 and 12  
Vict., c. 21.

<sup>1</sup> Subs. by the A. O. 1937 for "the G. of I."

<sup>2</sup> Subs. by the A. O. 1937 for "the G. G. in C."

<sup>3</sup> For ss. 123A and 123B, applicable to Bombay only, see the Presidency-towns Insolvency (Bombay Amendment) Act, 1933 (Bom. 20 of 1933), s. 10.

<sup>4</sup> In its application to Calcutta and Madras, this section has been amended: see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s. 11, and the Presidency-towns Insolvency (Madras Amendment) Act, 1943 (Mad. 5 of 1943), s. 16.

<sup>5</sup> See now the Provincial Insolvency Act, 1920 (5 of 1920).

<sup>6</sup> Sub-section (1) and the words "Notwithstanding the repeal effected by this Act," in sub-section (2) rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

*(The First Schedule.—Meetings of Creditors.)*

## THE FIRST SCHEDULE.

*(See section 26.)*

## MEETINGS OF CREDITORS.

Meetings of  
creditors.

1. The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors who have proved.

Summoning  
of meetings.

2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.

Notice of  
meetings.

3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the <sup>1</sup>[Official Gazette].

Duty of  
insolvent to  
attend if  
required.

4. It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

Proceedings  
not to be  
avoided for  
non-receipt  
of notice.

5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

Proof of  
issue of  
notice.

6. A certificate of the official assignee that the notice of any meeting has been duly given shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Costs of  
meeting.

7. Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

Chairman.

8. The official assignee shall be the chairman of any meeting.

Right to  
vote.

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

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<sup>1</sup> Subs. by the A. O. 1937 for "local official Gazette".

*(The First Schedule.—Meetings of Creditors.)*

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

No vote in respect of certain debts.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Secured creditor.

12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting.

Proof in respect of negotiable instruments.

13. It shall be competent to the official assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.

Power to require creditor to give up security.

14. If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors and shall be entitled to vote thereat.

Proof by partner.

15. The official assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Power of official assignee to admit or reject proof.

16. A creditor may vote either in person or by proxy.

Proxy.

17. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee.

Instrument of proxy.

18. A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

General proxy.

19. A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used.

Proxy to be deposited one day before date of meeting.

*(The First Schedule.—Meetings of Creditors. The Second Schedule.—  
Proof of Debts.)*

Official assignee as proxy  
Adjournment of meeting

20. A creditor may appoint the official assignee to act as his proxy.

21. The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.

Minute of proceedings

22. The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.

## THE SECOND SCHEDULE.

*(See section 48.)*

### PROOF OF DEBTS.

#### *Proofs in ordinary cases.*

Time for lodging proof.

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

Mode of lodging proof.

2. A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

Authority to make affidavit.

3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

Contents for affidavit

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

Affidavit to state if creditor holds security.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of proving debts.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

Right to see and examine proof.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

Deduction to be made from proof.

8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

#### *Proof by secured creditors.*

Proof where security realized.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realised.

## (The Second Schedule.—Proof of Debts.)

10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt. Proof where security is surrendered.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. Proof in other cases.

12. (1) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value. Valuation of security.

(2) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court. Amendment of valuation.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend, any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment. Refund of excess received.



*(The Second Schedule.—Proof of Debts.)*

Amendment  
where secur-  
ity subse-  
quently  
realized.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Exclusion  
from sharing  
in dividend.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

Limit of  
receipt.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

*Taking Accounts of Property Mortgaged, and of the Sale thereof.*

Inquiry into  
mortgage,  
etc.

18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee (unless it is otherwise ordered<sup>1</sup>) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

Conveyance.

19. All proper parties shall join in the conveyance to the purchaser, as the Court directs.

Proceeds of  
sale.

20. The monies to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the Court, and of such sale and the commission (if any)

<sup>1</sup> In the application of this rule to Calcutta, the words "for reasons to be recorded in writing" have been inserted here: see the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. 18 of 1936), s. 12.

*(The Second Schedule.—Proof of Debts.)*

of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the sale monies (if any) shall then be paid to the official assignee. But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs. Proceedings on inquiry.

*Periodical payments.*

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day. Periodical payments.

*Interest.*

23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum— Interest.

- (a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or
- (b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

## (The Second Schedule.—Proof of Debts.)

## Whipping.

[1909 : Act IV.]

*Debt payable at a future time.*Debt payable  
in future.

24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum, computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or rejection of proofs.*Admission  
or rejection  
of proof.

25. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

Court may  
expunge  
proof im-  
properly  
received.

26. If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Power for  
Court to  
expunge  
or reduce  
proof.

27. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or scheme upon the application of the insolvent.

THE THIRD SCHEDULE.—[*Enactments Repealed.*] Rep. by the  
Repealing and Amending Act, 1914 (X of 1914), s. 3 and Sch. II.

## THE WHIPPING ACT, 1909.

ACT No. IV OF 1909.<sup>1</sup>

[22nd March, 1909.]

An Act to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; It is hereby enacted as follows:—

Short title  
and extent.

1. (1) This Act may be called the Whipping Act, 1909; and
- (2) It extends to <sup>2</sup>[all the Provinces of India], inclusive of \* \* \* the Santhal Parganas.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 222; for Report of Select Committee, see *ibid.*, 1909, Pt. V, p. 47; and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, p. 19, and *ibid.*, 1909, Pt. VI, pp. 14, 18 and 31.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.; and in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2.

<sup>2</sup> Subs. by the A. O. 1948 for "the whole of British India".

<sup>3</sup> The words "British Baluchistan and" rep. by the A. O. 1948.

XLV of 1860. 2. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping. Whipping added to punishments described in Act XLV, 1860.

XLV of 1860 3. Whoever commits any of the following offences, namely:— Offences punishable with whipping in lieu of other punishment.

- (a) theft, as defined in section 378 of the Indian Penal Code other than theft by a clerk or servant of property in possession of his master;
- (b) theft in a building, tent or vessel, as defined in section 380 of the said Code;
- (c) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;
- (d) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;
- (e) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section;

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

XLV of 1860 4. <sup>1</sup>Whoever— Offences punishable with whipping in lieu of or in addition to other punishment.

- (a) abets, commits or attempts to commit, rape, as defined in section 375 of the Indian Penal Code;
- (b) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code;
- (c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code;
- (d) commits dacoity as defined in section 391 of the said Code ;

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code.

XLV of 1860. 5. Any juvenile offender who abets, commits or attempts to commit— Juvenile offenders when punishable with whipping.

- (a) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI and in sections 153A and 505 of that Code and offences punishable with death, or

<sup>1</sup> For other sections of the Indian Penal Code, offences under which are made punishable with whipping in Bombay, see the Bombay (Emergency Powers) Whipping Act, 1941 (Bom. 11 of 1941), s. 3.

(b) any offence punishable under any other law with imprisonment which the '[Provincial Government] may, by 'notification in the '[Official Gazette], specify in this behalf, may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

*Explanation.*—In this section the expression "juvenile offender" means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

Special provision as to punishment with whipping in frontier districts

6. Whenever any '[Provincial Government] has, by notification in the Official Gazette, declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such '[Provincial Government], any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, XLV of 1860 may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

7. [Amendment of section 392, Act V, 1898.] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

8. [Repeals.] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

THE SCHEDULE.—[Enactments repealed.] *Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Sch. II.*

## THE ANAND MARRIAGE ACT, 1909.

ACT No. VII OF 1909.<sup>5</sup>

[22nd October, 1909.]

An Act to remove doubts as to the validity of the marriage ceremony common among the Sikhs called Anand.

WHEREAS it is expedient to remove any doubts as to the validity of the marriage ceremony common among the Sikhs called Anand; It is hereby enacted as follows:—

1. (1) This Act may be called the Anand Marriage Act, 1909; and
- (2) It extends to '[all the Provinces of India].

<sup>1</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>2</sup> For notification enumerating the enactments for offences under which juvenile offenders may be punished with whipping, *see* Gazette of India, 1920, Pt. I, p. 1868.

<sup>3</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>4</sup> Subs. by the A. O. 1937 for "L. G."

<sup>5</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 357; for Report of Select Committee, *see* *ibid.*, 1909, Pt. V, p. 1034; and for Proceedings in Council, *see* *ibid.*, 1908, Pt. VI, p. 156, and *ibid.*, 1909, Pt. VI, pp. 156, 161 and 165.

<sup>6</sup> Subs. by the A. O. 1948 for "the whole of British India".

Short title and extent.

2. All marriages which may be or may have been duly solemnized according to the Sikh marriage ceremony called Anand shall be, and shall be deemed to have been with effect from the date of the solemnization of each respectively, good and valid in law.

Validity of  
Anand mar-  
riages.

3. Nothing in this Act shall apply to—

Exemption  
of certain  
marriages  
from Act.

(a) any marriage between persons not professing the Sikh religion,  
or

(b) any marriage which has been judicially declared to be null and  
void.

4. Nothing in this Act shall affect the validity of any marriage duly solemnized according to any other marriage ceremony customary among the Sikhs.

Saving of  
marriages  
solemnized  
according to  
other cere-  
monies.

5. Nothing in this Act shall be deemed to validate any marriage between persons who are related to each other in any degree of consanguinity or affinity which would, according to the customary law of the Sikhs, render a marriage between them illegal.

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dation of mar-  
riages within  
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ACT No .V OF 1910.<sup>1</sup>

[25th February, 1910.]

An Act to provide for the prevention of the spread of Dourine.

WHEREAS it is expedient to provide for the prevention of the spread of dourine ; It is hereby enacted as follows :—

Short title  
and extent.

1. (1) This Act may be called the Dourine Act, 1910.

(2) This section extends to <sup>2</sup>[all the Provinces of India] : the rest of this Act extends only to such areas as the <sup>3</sup>[Provincial Government] may, by notification<sup>4</sup> in the <sup>5</sup>[Official Gazette], direct.

Definitions.

2. (1) In this Act, the expressions “inspector” and “veterinary practitioner” mean, respectively, the officers appointed as such under this Act, acting within the local limits for which they are so appointed.

(2) The provisions of this Act in so far as they relate to entire horses shall, if the <sup>3</sup>[Provincial Government], by notification as aforesaid, so directs, apply also to entire asses used for mule-breeding purposes.

Registration  
of horses.

3. The <sup>3</sup>[Provincial Government] may, by notification as aforesaid, make such orders as it thinks fit directing and regulating the registration of entire horses maintained for breeding purposes.

Appointment  
of inspectors  
and veterinary  
practitioners.

4. (1) The <sup>3</sup>[Provincial Government] may, by notification as aforesaid, appoint any persons it thinks fit to be inspectors, and any qualified veterinary surgeons to be veterinary practitioners, under this Act, and to exercise and perform, within any area prescribed by the notification, the powers conferred and duties imposed by this Act upon such officers respectively.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

Powers of  
inspector.

5. An inspector may, subject to such rules as the <sup>3</sup>[Provincial Government] may make in this behalf,—

(a) enter and search any building, field or other place for the purpose of ascertaining whether there is therein any horse which is affected with dourine ;<sup>6\*</sup>

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1909, Pt. V, p. 96 ; for Report of Select Committee, see *ibid.*, 1910, Pt. V, p. 27 ; and for Proceedings in Council, see *ibid.*, 1909, Pt. VI, p. 157, and *ibid.*, 1910, Pt. VI, pp. 13, 90 and 121, dated 5th February, 1910, 26th February, 1910, and 12th March, 1910, respectively.

This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch. ; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

<sup>2</sup> Subs. by the A. O. 1948 for “the whole of British India”.

<sup>3</sup> Subs. by the A. O. 1937 for “L. G.”.

<sup>4</sup> It has been so extended to Coorg, see Coorg Gazette, 1919, Part I, p. 118, to Bombay, see Bombay Gazette, 1919, Part I, p. 300r, to the C. P., see C. P. Gazette, 1922, Part I, p. 1151

<sup>5</sup> Subs. by the A. O. 1937 for “local official Gazette”.

<sup>6</sup> The word “and” rep. by the Dourine (Amendment) Act, 1920 (8 of 1920), s. 2.

(b) prohibit, by order in writing, the owner or keeper of any horse, which in his opinion is affected with dourine, from using such horse for breeding purposes, pending examination by the veterinary practitioner ;

<sup>1</sup>[(c) direct, by order in writing, the owner or keeper of any horse which, in the opinion of the Inspectors, is affected with dourine to remove it or permit it to be removed for the purpose of segregation to a place specified in the order, and such direction shall be sufficient authority for the detention of the horse in that place for that purpose.]

6. An inspector issuing an order under section 5, <sup>2\*</sup> \* shall forth-  
with forward a copy of such order to the veterinary practitioner. Duties of  
Inspector

7. A veterinary practitioner receiving a copy of an order forwarded  
under section 6 shall, as soon as possible after receipt of such copy, examine  
the horse mentioned therein, and may for such purpose enter any building,  
field or other place. Inspection  
of horses.

8. A veterinary practitioner may— Powers of  
veterinary  
practitioner.

(a) cancel any order issued under section 5 <sup>3\*</sup> \* ; or

(b) if on microscopical examination <sup>4</sup>[or by other scientific test] he  
finds that any horse is affected with dourine,—

(i) in the case of an entire horse, cause it to be castrated,

<sup>5</sup>[(ii) in the case of a mare, with the previous sanction of such  
authority as the <sup>6</sup>[Provincial Government] may appoint in this  
behalf, or, if so empowered by the <sup>6</sup>[Provincial Government],  
without such sanction, cause it to be destroyed.]

9. When any horse is castrated or destroyed under section 8, the market-  
value of such horse immediately before it became affected with dourine shall  
be ascertained ; and the <sup>6</sup>[Provincial Government] shall pay as compensation  
to the owner thereof— Compensation  
for horse  
destroyed,  
etc.

(a) in the case of a mare which has been destroyed, or of an entire  
horse which has died in consequence of castration, such market-  
value, and,

(b) in the case of an entire horse which survives castration, half the  
amount by which such value has been diminished owing to  
infection with dourine and castration.

10. (r) A veterinary practitioner may award, as compensation to be  
paid under section 9 in respect of each horse castrated or destroyed under  
section 8, a sum not exceeding two hundred and fifty rupees. Settlement  
of compensa-  
tion.

<sup>1</sup> Ins. by the Dourine (Amendment) Act, 1920 (8 of 1920), s. 2.

<sup>2</sup> The word and letter " clause (b) " rep. by s. 3, *ibid*.

<sup>3</sup> The word and letter " clause (b) " rep. by s. 4, *ibid*.

<sup>4</sup> Ins. by s. 4, *ibid*.

<sup>5</sup> Subs. by s. 4, *ibid*., for the original sub-clause.

<sup>6</sup> Subs. by the A. O. 1937 for " L. G. ".



(2) If, in the opinion of the veterinary practitioner, the amount which should be paid as such compensation exceeds two hundred and fifty rupees, he shall report accordingly to the Collector, who shall decide the amount to be so paid.

Committees  
for hearing  
appeals.

11. (1) The <sup>1</sup>[Provincial Government] shall, by rules published in the <sup>2</sup>[Official Gazette], make provision for the constitution of a committee or committees for the hearing of appeals from decisions under section 10.

(2) Such rules shall provide that not less than one member of any committee constituted thereunder shall be a person not in the <sup>3</sup>[service of the Crown] or of a local authority.

Appeals

12. Any owner may, within two months from the date of a decision under section 10, appeal against such decision to the committee constituted in that behalf by rules made under section 11, and the decision of such committee shall be final.

Vexatious  
entries and  
searches.

13. (1) Whoever, being an inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field, building or other place, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

Rules

14. (1) The <sup>1</sup>[Provincial Government] may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules as aforesaid may—

<sup>4</sup>[(a) regulate the exercise of the powers conferred on Inspectors under section 5 ;]

(b) regulate the action to be taken by veterinary practitioners under section 8 ; <sup>5</sup>\*

\* \* \* \*

(3) All such rules shall be published in the <sup>2</sup>[Official Gazette], and, on such publication, shall have effect as if enacted in this Act.

(4) In making any rule under this section the <sup>1</sup>[Provincial Government] may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

<sup>1</sup> Subs. by the A. O. 1937 for " L. G. "

<sup>2</sup> Subs. by the A. O. 1937 for " local official Gazette ".

<sup>3</sup> Subs. by the A. O. 1937 for " employ of Govt. ".

<sup>4</sup> Subs. by the Dourine (Amendment) Act, 1920 (8 of 1920), s 5, for the original clause.

<sup>5</sup> The word " and " at the end of cl. (b) and the whole of cl. (c) rep. by s. 5, *ibid.*

15. Whcever uses or permits to be used for breeding purposes—

(a) any horse which has not been registered in accordance with the requirements of a notification under section 3, or

<sup>1</sup>[(b) any horse in respect of which an order under clause (b) or clause (c) of section 5 is in force,]

shall be punishable with fine which may amount, in the case of a first conviction, to fifty rupees, or, in the case of a second or subsequent conviction, to one hundred rupees.

Penalties.

16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

Protection  
to persons  
acting under  
Act

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## THE INDIAN ELECTRICITY ACT, 1910.

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<sup>1</sup> Subs. by the Dourine (Amendment) Act, 1920 (8 of 1920), s. 6, for the original cls (b) and (c).

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## (Part I—Preliminary.)

ACT NO. IX OF 1910.<sup>1</sup>

[18th March, 1910.]

An Act to amend the law relating to the supply and use  
of electrical energy.

WHEREAS it is expedient to amend the law relating to the supply and use  
of electrical energy ; It is hereby enacted as follows :—

## PART I.

## PRELIMINARY.

1. (1) This Act may be called the Indian Electricity Act, 1910. Short title,  
extent and  
commence-  
ment.
- (2) It extends to <sup>2</sup>[all the Provinces of India], inclusive of <sup>3</sup>\* the  
Santhal Parganas ; and
- (3) It shall come into force on such <sup>4</sup>date as the <sup>5</sup>[Central Government]  
may, by notification in the <sup>6</sup>[Official Gazette], direct in this behalf.
2. In this Act, expressions defined in the Indian Telegraph Act, 1885, Definitions  
have the meanings assigned to them in that Act, and, unless there is any-  
thing repugnant in the subject or context,—
  - (a) “aërial line” means any electric supply line which is placed  
above ground and in the open air:
  - (b) “area of supply” means the area within which alone a licensee  
is for the time being authorised by his license to supply  
energy:
  - (c) “consumer” means any person who is supplied with energy by  
a licensee, or whose premises are for the time being connected  
for the purposes of a supply of energy with the works of a  
licensee:
  - (d) “daily fine” means a fine for each day on which an offence is  
continued after conviction therefor:
  - (e) “distributing main” means the portion of any main with which  
a service line is, or is intended to be, immediately connected:
  - (f) “electric supply-line” means a wire, conductor or other means  
used for conveying, transmitting or distributing energy together  
with any casing, coating, covering, tube, pipe or insulator

XIII of  
1885.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1909, Pt. V, p. 87 ; for Report of Select Committee, *see* *ibid.*, 1910, Pt. V, p. 39 ; and for Proceedings in Council, *see* *ibid.*, 1909, Pt. VI, p. 152, and *ibid.*, 1910, Pt. VI, pp. 12, 157 and 275, dated 5th February, 1910, 19th March, 1910, and 9th April, 1910, respectively.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been applied, with modifications, to the Excluded Areas in Assam by the Assam (Excluded Areas) Electricity Regulation, 1946 (Assam 2 of 1946).

It has been amended in its application to Bombay by Bom. Act 18 of 1946 and in its application to the Punjab by Pun. Act 6 of 1939, as amended (with effect from 1-11-1940) by Pun. Act 11 of 1941. It has also been supplemented in U. P. by the U. P. Sales of Electricity Surcharge Act, 1942 (U. P. 10 of 1942).

<sup>2</sup> Subs. by the A. O. 1948 for “the whole of British India”.

<sup>3</sup> The words “British Baluchistan and” rep. by the A. O. 1948.

<sup>4</sup> 1st January, 1911, *see* Gen. R. & O., Vol. IV, p. 1.

<sup>5</sup> Subs. by the A. O. 1937 for “G. G. in C.”.

<sup>6</sup> Subs. by the A. O. 1937 for “Gazette of India”.

## (Part I —Preliminary Part II —Supply of Energy.)

enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy:

- (g) "energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message:
- (h) "licensee" means any person licensed under Part II to supply energy:
- (i) "main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public:
- (j) "prescribed" means prescribed by rules made under this Act:
- (k) "public lamp" means an electric-lamp used for the lighting of any street:
- <sup>1</sup>[(l) "service line" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee—
  - (i) to a single consumer either from a distributing main or immediately from the licensee's premises, or
  - (ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main.]
- (m) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and foot-way over any public bridge or causeway: and
- (n) "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a license granted under Part II.

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## PART II.

### SUPPLY OF ENERGY.

#### *Licenses.*

3. (1) The <sup>2</sup>[Provincial Government] may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply energy in any specified area, and also

Grant of  
licenses.

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<sup>1</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 2, for the original clause

<sup>2</sup> Subs. by the A. O. 1937 for "L. G."

*(Part II.—Supply of Energy )*

to lay down or place electric supply-lines for the conveyance and transmission of energy,—

- (a) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or
- (b) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof the following provisions shall have effect, namely :—

- (a) any person applying for a license under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the license shall not be granted—
  - (i) until all objections<sup>1</sup> received by the <sup>1</sup>[Provincial Government] with reference thereto have been considered by it:  
 Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid ; and
  - (ii) until, in the case of an application for a license for an area including the whole or any part of any cantonment, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for naval or military purposes, the <sup>1</sup>[Provincial Government] has ascertained that there is no objection to the grant of the license on the part of the <sup>2</sup>[Engineer-in-Chief, Army Head Quarters, India] ;
- (b) where an objection is received from any local authority concerned, the <sup>1</sup>[Provincial Government] shall, if in its opinion the objection is insufficient, record in writing, and communicate to such local authority its reasons for such opinion ;
- (c) no application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given ;

<sup>1</sup> Subs by the A. O. 1937 for " L. G. ".

<sup>2</sup> Subs by the Repealing and Amending Act, 1925 (37 of 1925), s. 2 and Sch. I, for " Director of Military Works " which had been subs for " General Officer Commanding the Division " by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 3.



## (Part II.—Supply of Energy)

(d) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as the <sup>1</sup>[Provincial Government] may think fit; and

(ii) save in cases in which under section 10, clause (b), the provisions of sections 5 and 7, or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or section 7;

(e) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose;

(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the <sup>1</sup>[Provincial Government] is hereby empowered to make, apply to the undertaking authorised by the license:

Provided that, where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the provisions of clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license.

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Revocation  
or amend-  
ment of  
licenses.

4. (1) The <sup>1</sup>[Provincial Government] may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely:—

(a) where the licensee, in the opinion of the <sup>1</sup>[Provincial Government], makes wilful and unreasonably prolonged default in doing anything required of him or under this Act;

(b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Sub-section (3) was rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

*(Part II.—Supply of Energy.)*

(c) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the <sup>1</sup>[Provincial Government] may substitute therefor by order under sub-section (3), clause (b), and before exercising any of the powers conferred on him thereby in relation to the execution of works,—

(i) to show, to the satisfaction of the <sup>1</sup>[Provincial Government], that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(ii) to make the deposit or furnish the security required by his license;

(d) where the licensee is, in the opinion of the <sup>1</sup>[Provincial Government], unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Where the <sup>1</sup>[Provincial Government] might, under sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license.

(3) Where in its opinion the public interest so permits, the <sup>1</sup>[Provincial Government] may, on the application or with the consent of the licensee, and, if the licensee is not a local authority, after consulting the local authority (if any) concerned,—

(a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or

(b) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in section 3, sub-section (2), clause (f), as it thinks fit.

<sup>25</sup>. Where the <sup>1</sup>[Provincial Government] revokes, under section 4, sub-section (1), the license of a licensee, not being a local authority, the following provisions shall have effect, namely:—

(a) the <sup>1</sup>[Provincial Government] shall serve a notice of the revocation upon the licensee, and, where the whole of the area of supply is included in the area for which a single local authority is constituted, upon that local authority also, and shall in the notice fix a date on which the revocation shall take effect; and on and with effect from that date, all the powers and liabilities of the licensee under this Act shall absolutely cease and determine;

Provisions where license of licensee, not being a local authority, is revoked.

<sup>1</sup> Subs by the A. O. 1937 for "L. G.".

<sup>2</sup> This section has been amended in its application to Bombay by the Indian Electricity (Bombay Amendment) Act, 1946 (Bom. 18 of 1946), s. 2.

*(Part II —Supply of Energy.)*

- (b) where a notice has been served on a local authority under clause (a), the local authority may, within three months after the service of the notice, and with the written consent of the <sup>1</sup>[Provincial Government] by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking, or of any similar considerations;

- (c) where no purchase has been effected by the local authority under clause (b), and any other person is willing to purchase the undertaking, the <sup>1</sup>[Provincial Government] may, if it thinks fit, with the consent of the licensee, or without the consent of the licensee in case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to such other person;
- (d) where no purchase has been effected under clause (b) or clause (c) within such time as the <sup>1</sup>[Provincial Government] may consider reasonable, or where the whole of the area of supply is not included in the area for which a single local authority is constituted, the <sup>1</sup>[Provincial Government] shall have the option of purchasing the undertaking and, if the <sup>1</sup>[Provincial Government] elects to purchase, the licensee shall sell the undertaking to the <sup>1</sup>[Provincial Government] upon terms and conditions similar to those set forth in clause (b);

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

## (Part II.—Supply of Energy )

(e) where a purchase has been effected under any of the preceding clauses,—

(i) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking:

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(ii) the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking is purchased, and, save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee:

Provided that where the <sup>1</sup>[Provincial Government] elects to purchase under clause (d), the license shall, after purchase, in so far as the <sup>1</sup>[Provincial Government] is concerned, cease to have any further operation;

(f) where no purchase has been effected under any of the foregoing clauses, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the <sup>1</sup>[Provincial Government] may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and re-instatement from the licensee;

(g) if the licensee has been required to sell the undertaking, and if the sale has not been completed by the date fixed in the notice issued under clause (a), the purchaser may, with the previous sanction of the <sup>1</sup>[Provincial Government], work the undertaking pending the completion of the sale.

6. (1) Where the <sup>1</sup>[Provincial Government] revokes the license of a local authority under section 4, sub-section (1), and any person is willing to purchase the undertaking, the <sup>1</sup>[Provincial Government] may, if it thinks fit, require the local authority to sell, and thereupon the local authority shall sell, the undertaking to such person on such terms as the <sup>1</sup>[Provincial Government] thinks just.

Provisions  
where license  
of local  
authority is  
revoked

(2) Where no purchase has been effected under sub-section (1), the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

*(Part II.—Supply of Energy.)*

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the <sup>1</sup>[Provincial Government] may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Purchase of  
undertaking

<sup>27</sup>. (1) Where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking, and, if the local authority, with the previous sanction of the <sup>1</sup>[Provincial Government], elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking:

Provided also that there shall be added to such value as aforesaid such percentage, if any, not exceeding twenty per centum on that value as may be specified in the license, on account of compulsory purchase.

(2) Where—

- (a) the local authority does not elect to purchase under sub-section (1), or
- (b) the whole of the area of supply is not included in the area for which a single local authority is constituted, or
- (c) a licensee supplies energy from the same generating station to two or more areas of supply, each controlled by its own local authority, and has been granted a license in respect of each area of supply,

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> This section has been amended in its application to Bombay and the Punjab: see the Indian Electricity (Bombay Amendment) Act, 1946 (Bom. 18 of 1946), s. 2 and the Punjab Electricity Act, 1939 (Pun. 6 of 1939) as amended by the Punjab Electricity (Amendment) Act, 1941 (Pun. 11 of 1941).

## (Part II.—Supply of Energy.)

the <sup>1</sup>[Provincial Government] shall have the like option upon the like terms and conditions.

(3) Where a purchase has been effected under sub-section (1) or sub-section (2),—

(a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking:

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(b) save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee:

Provided that where the <sup>1</sup>[Provincial Government] elects to purchase under sub-section (2), the license shall, after purchase, in so far as the <sup>1</sup>[Provincial Government] is concerned, cease to have any further operation.

(4) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or the <sup>1</sup>[Provincial Government], as the case may be.

(5) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the <sup>1</sup>[Provincial Government], waive its option to purchase and enter into an agreement with the licensee for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (1), upon such terms and conditions as may be stated in such agreement.<sup>2</sup>

8. Where, on the expiration of any of the periods referred to in section 7, sub-section (1), neither a local authority nor the <sup>1</sup>[Provincial Government] purchases the undertaking, and the license is, on the application or with the consent of the licensee, revoked, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provisions where no purchase and license revoked with consent of licensee.

Provided that, if the licensee does not exercise such option within a period of six months, the <sup>1</sup>[Provincial Government] may proceed to take action as provided in section 5, clause (f), proviso.

9. (1) The licensee shall not, at any time without the previous consent in writing of the <sup>1</sup>[Provincial Government], acquire, by purchase or otherwise, the license or the undertaking of, or associate himself so far as the business of supplying energy is concerned with, any person supplying, or intending to supply, energy under any other license, and, before applying for such consent, the licensee shall give not less than one month's notice of

Licensee not to purchase, or associate himself with other licensed undertakings or transfer his undertakings.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> In the application of the Act to Bombay, a new s. 7A has been ins. here by the Indian Electricity (Bombay Amendment) Act, 1946 (Bom. 18 of 1946), s. 3.

## (Part II.—Supply of Energy.)

the application to every local authority, both in the licensee's area of supply, and also in the area or district in which such other person supplies, or intends to supply, energy:

Provided that nothing in this sub-section shall be construed to require the consent of the <sup>1</sup>[Provincial Government] for the supply of energy by one licensee to another in accordance with the provisions of clause IX of the Schedule.

(2) The licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the <sup>1</sup>[Provincial Government].

(3) Any agreement relating to any transaction of the nature described in sub-section (1) or sub-section (2), unless made with, or subject to, such consent as aforesaid, shall be void.

General  
power for  
Government  
to vary  
terms of  
purchase.

10. Notwithstanding anything in section 5, 7 and 8, the <sup>1</sup>[Provincial Government] may, <sup>2</sup>\* \* \* in any license to be granted under this Act,—

(a) vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or

(b) direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.

Annual  
accounts of  
licensee.

11. (1) Every licensee shall, unless expressly exempted from the liability by his license, or by order in writing of the <sup>1</sup>[Provincial Government], prepare and render to the <sup>1</sup>[Provincial Government] or to such authority as the <sup>1</sup>[Provincial Government] may appoint in this behalf, on or before the prescribed date in each year, an annual statement of accounts of his undertaking made up to such date in such form, and containing such particulars, as may be prescribed in this behalf.

(2) The licensee shall keep copies of such annual statement at his office, and sell the same to any applicant at a price not exceeding five rupees per copy.

## Works.

Provisions  
as to the  
opening and  
breaking up  
of streets,  
railways and  
tramways.

12. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area—

(a) open and break up the soil and pavement of any street, railway or tramway;

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

*(Part II.—Supply of Energy.)*

- (b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) lay down and place electric supply-lines and other works;
- (d) repair, alter or remove the same; and
- (e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, whereover or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee :

Provided that any support of an aërial line or any stay or strut required for the sole purpose of securing in position any support of an aërial line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town <sup>1\*</sup> \*, the Commissioner of Police, by order in writing so directs :

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town <sup>1\*</sup> \*, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the <sup>2</sup>[Provincial Government].

(5) Nothing contained in sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not repairable by <sup>3</sup>[the Central Government or the Provincial Government] or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the <sup>2</sup>[Provincial Government] :

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<sup>1</sup> The words " or Rangoon " rep. by the A. O. 1937.

<sup>2</sup> Subs by the A. O. 1937 for " L. G. ".

<sup>3</sup> Subs by the A. O 1937 for " the Govt. ".



*(Part II.—Supply of Energy)*

Provided that the <sup>1</sup>[Provincial Government] shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the <sup>1</sup>[Provincial Government] may direct, and within such period as the <sup>1</sup>[Provincial Government] may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the <sup>1</sup>[Provincial Government].

Notice of  
new works.

13. (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, part of a street, railway, tramway, canal or waterway, the following provisions shall have effect, namely :—

- (a) not less than one month before commencing the execution of the works (not being a service line immediately attached, or intended to be immediately attached, to a distributing main, or the repair, renewal or amendment of existing works of which the character or position is not to be altered), the licensee shall serve upon the person responsible for the repair of the street or part of a street (hereinafter in this section referred to as "the repairing authority") or upon the person for the time being entitled to work the railway, tramway, canal or waterway (hereinafter in this section referred to as "the owner"), as the case may be, a notice in writing describing the proposed works, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall, upon being required to do so by the repairing authority or owner, as the case may be, from time to time give such further information in relation thereto as may be desired ;
- (b) if the repairing authority intimates to the licensee that it disapproves of such works, section or plan, or approves thereof subject to amendment, the licensee may, within one week of receiving such intimation, appeal to the <sup>1</sup>[Provincial Government], whose decision, after considering the reasons given by the repairing authority for its action, shall be final ;
- (c) if the repairing authority fails to give notice in writing of its approval or disapproval to the licensee within one month, it

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

*(Part II.—Supply of Energy.)*

shall be deemed to have approved of the works, section and plan, and the licensee, after giving not less than forty-eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and the section and plan served under clause (a) ;

- (d) if the owner disapproves of such works, section or plan, or approves thereof subject to amendment, he may, within three weeks after the service of the notice under clause (a), serve a requisition upon the licensee demanding that any question in relation to the works or to compensation, or to the obligations of the owner to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration ;
- (e) where no requisition has been served by the owner upon the licensee under clause (d), within the time named, the owner shall be deemed to have approved of the works, section and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the works may, upon payment or securing of compensation, be executed according to the notice and the section and plan, subject to such modifications as may have been determined by arbitration or agreed upon between the parties ;
- (f) where the works to be executed consist of the laying of any underground service line immediately attached, or intended to be immediately attached, to a distributing main, the licensee shall give to the repairing authority or the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works ;
- (g) where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be commenced forthwith and shall be carried on with all reasonable despatch, and, if possible, both by day and by night until completed.

(2) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

*(Part II.—Supply of Energy.)*

(3) Notwithstanding anything in this section, the licensee may, in case of emergency due to the breakdown of an underground electric supply-line, after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of sub-section (1) :

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case (unless with the written consent of the <sup>1</sup>[Provincial Government]) for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

Alteration  
of pipes or  
wires.

14. (1) Any licensee may alter the position of any pipe (not forming, in a case where the licensee is not a local authority, part of a local authority's main sewer), or of any wire under or over any place which he is authorised to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under this Act ; and any person may alter the position of any electric supply-lines or works of a licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

(2) In any such case as aforesaid the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply, namely :—

- (a) not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this section referred to as "the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works as the case may be (hereinafter in this section referred to as "the owner"), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the time when it is to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire ;
- (b) within fourteen days after the service of the notice, section and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration ;

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<sup>1</sup> Subs. by the A. O. 1937 for " L G " .

*(Part II.—Supply of Energy.)*

- (c) every arbitrator to whom a reference is made under clause (b) shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid, as far as possible, interference therewith ;
- (d) where no requisition is served upon the operator under clause (b) within the time named, or where such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice, section and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties ;
- (e) the owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, determined by arbitration ;
- (f) where a statement is served upon the operator under clause (e), he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made ; and thereupon the owner may proceed to execute the alteration as required by the operator ;
- (g) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under clause (f), comply with the notice, the operator may himself execute the alteration ;
- (h) all expenses properly incurred by the owner in complying with a notice served upon him by the operator under clause (f) may be recovered by him from the operator.

(3) Where the licensee or other person desiring to make the alteration makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

*(Part II.—Supply of Energy.)*

Laying of electric supply-lines or other works near sewers, pipes or other electric-supply-lines or works.

## 15. (1) Where—

- (a) the licensee requires to dig or sink any trench for laying down any new electric supply-lines or other works, near to which any sewer, drain, water-course or work under the control of the <sup>1</sup>[Provincial Government] or of any local authority, or any pipe, syphon, electric supply-line or other work belonging to any duly authorised person, has been lawfully placed, or
- (b) any duly authorised person requires to dig or sink any trench for laying down or constructing any new pipes or other works, near to which any electric supply-lines or works of a licensee have been lawfully placed,

the licensee or such duly authorised person, as the case may be (hereinafter in this section referred to as “the operator”), shall, unless it is otherwise agreed upon between the parties interested or in case of sudden emergency, give to the <sup>1</sup>[Provincial Government] or local authority, or to such duly authorised person or to the licensee, as the case may be (hereinafter in this section referred to as “the owner”), not less than forty-eight hours’ notice in writing before commencing to dig or sink the trench and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(2) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply-line or work, he shall support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(3) Where the operator (being the licensee) lays any electric supply-line across, or so as to be liable to touch, any pipes, lines or service-pipes or service-lines belonging to any duly authorised person or to any person supplying, transmitting or using energy under this Act, he shall not, except with the written consent of such person and in accordance with section 34, sub-section (1), lay his electric supply-lines so as to come into contact with any such pipes, lines or service-pipes or service-lines.

(4) Where the operator makes default in complying with any of the provisions of this section, he shall make full compensation for any loss or damage incurred by reason thereof.

(5) Where any difference or dispute arises under this section, the matter shall be determined by arbitration.

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<sup>1</sup> Subs. by the A. O 1937 for “L. G.”.

*(Part II.—Supply of Energy.)*

(6) Where the licensee is a local authority, the references in this section to the local authority and to sewers, drains, water-courses or works under its control shall not apply.

16. (1) Where any person, in exercise of any of the powers conferred by or under this Act, opens or breaks up the soil or pavement of any street, railway or tramway, or any sewer, drain or tunnel, he shall—

- (a) immediately cause the part opened or broken up to be fenced and guarded ;
- (b) before sunset cause a light or lights, sufficient for the warning of passengers, to be set up and maintained until sunrise against or near the part opened or broken up ;
- (c) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel, opened or broken up, and carry away the rubbish occasioned by such opening or breaking up ; and
- (d) after reinstating and making good the soil or pavement, or the sewer, drain or tunnel broken or opened up, keep the same in good repair for three months and for any further period, not exceeding nine months, during which subsidence continues.

(2) Where any person fails to comply with any of the provisions of sub-section (1), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect of which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(3) Where any difference or dispute arises as to the amount of the expenses incurred under sub-section (2), the matter shall be determined by arbitration.

17. (1) A licensee shall, before laying down or placing, within ten yards of any part of any telegraph-line, any electric supply-line or other works (<sup>1</sup>[not being either service lines] or electric supply-lines for the repair, renewal or amendment of existing works of which the character or position is not to be altered), give not less than ten days' notice in writing to the telegraph-authority, specifying—

- (a) the course of the works or alteration proposed,
- (b) the manner in which the works are to be utilised,
- (c) the amount and nature of the energy to be transmitted, and
- (d) the extent to, and manner in, which (if at all) earth returns are to be used ;

<sup>1</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 4, for "not being service lines immediately attached or intended to be immediately attached to a distributing main".

Streets,  
railways,  
tramways,  
sewers,  
drains or  
tunnels  
broken up to  
be reinstated  
without  
delay.

Notice to  
telegraph-  
authority.

## (Part II. —Supply of Energy.)

and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph-authority within that period for preventing any telegraph-line from being injuriously affected by such works or alterations :

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph-authority) arising from defects in any of the electric supply-lines or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works to be executed consist of the laying <sup>1</sup>[or placing] of any <sup>2</sup>\* service line <sup>3</sup>\* \* \* \* \*, the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph-authority a notice in writing of his intention to execute such works.

Aerial lines.

18. (1) Save as provided in section 13, sub-section (3), nothing in this Part shall be deemed to authorise or empower a licensee to place any aerial line along or across any street, railway, tramway, canal or waterway unless and until the <sup>4</sup>[Provincial Government] has communicated to him a general approval in writing of the methods of construction which he proposes to adopt :

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the <sup>4</sup>[Provincial Government] may require the licensee forthwith to remove the same, or may cause the same to be removed, and recover from the licensee the expenses incurred in such removal.

<sup>5</sup>[(3) Where any tree standing or lying near an aerial line, or where any structure or other object which has been placed or has fallen near an aerial line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works, a Magistrate of the first class or, in a Presidency-town <sup>6</sup>\* \*, the Commissioner of Police, may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.]

<sup>1</sup> Ins. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 4.

<sup>2</sup> The word "underground" rep. by s. 4, *ibid.*

<sup>3</sup> The words "immediately attached, or intended to be immediately attached, to a distributing main" rep. by s. 4, *ibid.*

<sup>4</sup> Subs. by the A. O. 1937 for "L. G."

<sup>5</sup> Subs. by Act I of 1922, s. 5, for the original sub-section.

<sup>6</sup> The words "or Rangoon" rep. by the A. O. 1937.

## (Part II.—Supply of Energy.)

(4) When disposing of an application under sub-section (3), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the aerial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

<sup>1</sup>[*Explanation*.—For the purposes of this section, the expression “tree” shall be deemed to include any shrub, hedge, jungle-growth or other plant.]

19. (r) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him. Compensation for damage.

(2) Save in the case provided for in section 12, sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

*Supply.*

<sup>2</sup>[19A. For the purposes of this Act, the point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed.] Point where supply is delivered.

20. (r) A licensee or any person duly authorised by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of— Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

- (a) inspecting and testing the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee ; or
- (b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply ; or
- (c) removing, where a supply of energy is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, <sup>3</sup>[meters], fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate or, in a Presidency-town <sup>4</sup>\*, by the Commissioner of Police, and after giving not less than twenty-four hours' notice in writing to the occupier, enter any premises to which energy is or has been supplied, or is to be

<sup>1</sup> Ins. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 5.

<sup>2</sup> Ins. by s. 6, *ibid*.

<sup>3</sup> Ins. by s. 7, *ibid*.

<sup>4</sup> The words “ or Rangoon ” rep by the A. O. 1937.



*(Part II.—Supply of Energy.)*

supplied, by him for the purpose of examining and testing the electric-wires, fittings, works and apparatus for the use of energy belonging to the consumer.

<sup>1</sup>[(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises in pursuance of the provisions of sub-section (1) or sub-section (2), or, when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.]

Restrictions  
on licensee's  
controlling  
or interfering  
with use of  
energy.

21. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilising energy supplied by him, or, save as provided by section 23, sub-section (2), or by section 26, sub-section (7), in any way to control or interfere with the use of such energy :

Provided that no person may adopt any form of appliance, or use the energy supplied to him, so as unduly or improperly to interfere with the supply by the licensee of energy to any other person.

<sup>2</sup>[(2) Subject to the provisions of sub-section (1), a licensee may, with the previous sanction of the <sup>3</sup>[Provincial Government], given after consulting the local authority, where the licensee is not the local authority. make conditions not inconsistent with this Act or with his license or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may, with the like sanction given after the like consultation, add to or alter or amend any such conditions ; and any conditions made by a licensee without such sanction shall be null and void :

Provided that any such conditions made before the 23rd day of January, 1922 shall, if sanctioned by the <sup>3</sup>[Provincial Government] on application made by the licensee before such date as the <sup>3</sup>[Provincial Government] may, by general or special order, fix in this behalf, be deemed to have been made in accordance with the provisions of this sub-section.

(3) The <sup>3</sup>[Provincial Government] may, after the like consultation, cancel any condition or part of a condition previously sanctioned under sub-section (2) after giving to the licensee not less than one month's notice in writing of its intention so to do.]

<sup>1</sup> Ins. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 7.

<sup>2</sup> Ins. by s. 8, *ibid.*

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

## (Part II.—Supply of Energy.)

<sup>1</sup>[(4)] Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of sub-section (1), the matter shall be either referred to an Electric Inspector and decided by him or, if the licensee or consumer so desires, determined by arbitration.

22. Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply :

Obligation on licensee to supply energy.

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

23. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his license.

Charges for energy to be made without undue preference.

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

<sup>2</sup>[(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer—

- (a) by the actual amount of energy so supplied, or
- (b) by the electrical quantity contained in the supply, or
- (c) by such other method as may be approved by the <sup>3</sup>[Provincial Government].

(4) Any charges made by a licensee under clause (c) of sub-section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely :—

- (a) the consumer's load factor, or
- (b) the power factor of his load, or
- (c) his total consumption of energy during any stated period, or
- (d) the hours at which the supply of energy is required.]

<sup>1</sup> The original sub-section (2) was re-numbered (4) by s. 8 of the Indian Electricity (Amendment) Act, 1922 (1 of 1922).

<sup>2</sup> Ins. by s. 9, *ibid.*

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

## (Part II.—Supply of Energy.)

Discontinuance  
of supply to  
consumer  
neglecting to  
pay charge.

24. <sup>1</sup>[(1)] Where any person neglects to pay any charge for energy or any <sup>2</sup>[sum, other than a charge for energy,] due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

<sup>3</sup>[(2)] <sup>4</sup>\* \* Where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision :

<sup>5</sup>[Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.]

Exemption  
of electric  
supply-lines  
or other  
apparatus  
from attach-  
ment in cer-  
tain cases.

25. Where any electric supply-lines, meters, fittings, works or apparatus belonging to a licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fittings, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

Meters.

26. (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter :

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

<sup>1</sup> The first paragraph of s. 24 was numbered as sub-section (1) by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 10.

<sup>2</sup> Subs. by s. 10, *ibid.*, for "other sum".

<sup>3</sup> The original proviso to s. 24 was numbered as sub-section (2) by s. 10, *ibid.*

<sup>4</sup> The words "Provided that" rep. by s. 10, *ibid.*

<sup>5</sup> Ins. by s. 10, *ibid.*

*(Part II.—Supply of Energy.)*

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electric Inspector, and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without giving to the licensee not less than forty-eight hours' notice in writing of his intention.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electric Inspector, or by a competent person specially appointed by the <sup>1</sup>[Provincial Government] in this behalf; and, where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not, in the opinion of such Inspector or person, have been correct <sup>2</sup>\* \* \* ; and where the matter has been decided by any person other than the Electric Inspector, an appeal shall lie to the Inspector, whose decision shall in every case be final: but, save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

<sup>3</sup>[Provided that, before either a licensee or a consumer applies to the Electric Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.]

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> The words "on the basis of the previous supply" rep. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 11.

<sup>3</sup> Ins. by s 11, *ibid.*

*(Part II.—Supply of Energy.)*

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided, also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

*Explanation.*—A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

Supply of  
energy out-  
side area of  
supply.

27. Notwithstanding anything in this Act, the <sup>1</sup>[Provincial Government] may, by order in writing, and subject to such conditions and restrictions, if any, as it thinks fit to impose, authorise any licensee to supply energy to any person outside the area of supply, and to lay down or place electric supply-lines for that purpose:

Provided, first, that no such authority shall be conferred on the licensee within the area of supply of another licensee without that licensee's consent, unless the <sup>1</sup>[Provincial Government] considers that his consent has been unreasonably withheld:

Provided, secondly, that such authority shall not be conferred unless the person to whom the supply is to be given has entered into a specific agreement with the licensee for the taking of such supply:

Provided, thirdly, that a licensee on whom such authority has been conferred shall not be deemed to be empowered outside the area of supply to open or break up any street, or any sewer, drain or tunnel in or under any street, railway or tramway, or to interfere with any telegraph-line,

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

(Part II.—Supply of Energy. Part III.—Supply, Transmission and Use of Energy by Non-licensees.)

without the written consent of the local authority or person by whom such street, sewer, drain or tunnel is repairable, or of the telegraph-authority, as the case may be, <sup>1</sup>[unless the <sup>2</sup>[Provincial Government], after such inquiry as it thinks fit, considers that such consent has been unreasonably withheld:]

Provided, fourthly, that, save as aforesaid, the provisions of this Act shall apply in the case of any supply authorised under this section as if the said supply were made within the area of supply.

### PART III.

#### SUPPLY, TRANSMISSION AND USE OF ENERGY BY NON-LICENSEES

28. (1) No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the <sup>2</sup>[Provincial Government] and in accordance with such conditions as the <sup>2</sup>[Provincial Government] may fix in this behalf, and any agreement to the contrary shall be void:

Sanction required by non-licensees in certain cases.

\* \* \* \* \*

Provided <sup>4</sup>\* that such sanction shall not be given within the area for which a local authority is constituted, without that local authority's consent, or within the area of supply of any licensee, without that licensee's consent, unless the <sup>2</sup>[Provincial Government] considers that consent has been unreasonably withheld.

(2) Where any difference or dispute arises as to whether any person is or is not engaging, or about to engage, in the business of supplying energy within the meaning of sub-section (1), the matter shall be referred to the <sup>2</sup>[Provincial Government], and the decision of the <sup>2</sup>[Provincial Government] thereon shall be final.

29. (1) The local authority may, by order in writing, confer and impose upon any person, who has obtained the sanction of the <sup>2</sup>[Provincial Government] under section 28 to engage in the business of supplying energy, all or any of the powers and liabilities of a licensee under sections 12 to 19, both inclusive, and the provisions of the said sections shall thereupon apply as if such person were a licensee under Part II.

Power for non-licensees to break up streets.

(2) A local authority, not being a licensee, shall, for the purpose of lighting any street, have the powers and be subject to the liabilities respectively conferred and imposed by sections 12 to 19, both inclusive, so far as applicable, as if it were a licensee under Part II.

<sup>1</sup> Ins. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 12.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> The first proviso rep. by Act 1 of 1922, s. 13

<sup>4</sup> The word "also" rep. by s. 13, *ibid.*

(Part III.—Supply, Transmission and Use of Energy by Non-licensees.)

(3) In cases other than those for which provision is made by sub-section (1), the person responsible for the repair of any street may, by order in writing, confer and impose upon any person who proposes to transmit energy in such street all or any of the powers and liabilities of a licensee under sections 12 to 19 (both inclusive), in so far as the same relate to—

(a) opening or breaking up of the soil or pavement of such street,  
or

(b) laying down or placing electric supply-lines in, under, along or across such street, or

(c) repairing, altering or removing such electric supply-lines,  
and thereupon the provisions of the said sections shall, so far as aforesaid, apply to such person as if he were a licensee under Part II.

(4) If no order is made within fourteen days after the receipt of an application for the same under sub-section (1) or sub-section (3), the order so applied for shall be deemed to have been refused, and every order, and every refusal to make an order, under sub-section (1) or sub-section (3), shall be subject to revision by the <sup>1</sup>[Provincial Government].

Application of section 18 to aerial lines maintained by railways

<sup>2</sup>[29A. The provisions of sub-sections (3) and (4) of section 18 and of the *Explanation* thereto shall apply in the case of any aerial line placed by any railway administration as defined in section 3 of the Indian Railways Act, 1890, as if references therein to the licensee were references to the railway administration.] IX of 1890.

Control of transmission and use of energy.

30. (1) No person, other than a licensee duly authorised under the terms of his license, shall transmit or use energy at a rate exceeding two hundred and fifty watts,—

(a) in any street, or

(b) in any place,

(i) in which one hundred or more persons are likely ordinarily to be assembled, or

(ii) which is a factory within the meaning of the Indian Factories Act <sup>3</sup>[1911], or

XII of 1911.

(iii) which is a mine within the meaning of the <sup>4</sup>Indian Mines Act, 1901, <sup>5</sup>[or

VIII of 1901

(iv) to which the <sup>1</sup>[Provincial Government], by general or special order, declares the provisions of this sub-section to apply.]

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Ins. by the Indian Electricity (Amendment) Act, 1923 (40 of 1923), s. 2.

<sup>3</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 14, for "1881". See now the Factories Act, 1934 (25 of 1934).

<sup>4</sup> See now the Indian Mines Act, 1923 (4 of 1923),

<sup>5</sup> Ins. by Act 1 of 1922, s. 14.

(Part III.—Supply, Transmission and Use of Energy by Non-licensees.

Part IV.—General.)

without giving not less than seven clear days' notice in writing of his intention to the District Magistrate, or, in a Presidency-town <sup>1\*</sup> \* to the Commissioner of Police, and complying with such of the provisions of Part IV, and of the rules made thereunder, as may be applicable:

Provided that nothing in this section shall apply to energy used for the public carriage of passengers, animals or goods on, or for the lighting or ventilation of the rolling-stock of, any railway or tramway subject to the provisions of the Indian Railways Act, 1890:

IX of 1890

Provided, also, that the <sup>2</sup>[Provincial Government] may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt from the application of this section or of any such provision or rule as aforesaid any person or class of persons using energy on premises upon or in connection with which it is generated, or using energy supplied under Part II in any place specified in clause (b).

\* (2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to the <sup>2</sup>[Provincial Government], and the decision of the <sup>2</sup>[Provincial Government] thereon shall be final.

(3) The provisions of this section shall be binding on the Crown.

## PART IV.

### GENERAL.

#### *Protective Clauses.*

31. No person shall, in the generation, transmission, supply or use of energy, in any way injure any railway, tramway, canal or waterway or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway, canal or water-way. Protection of railways and canals, docks, wharves and piers.

32. (1) Every person generating, transmitting, supplying or using energy (hereinafter in this section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric supply-lines and other works and in working his system, so as not injuriously to affect, whether by induction, or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic or electric-signalling communication, or the currents in such wire or line. Protection of telegraphic, telephonic and electric-signalling lines.

<sup>1</sup> The words "or Rangoon" rep. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".



## (Part IV.—General.)

(2) Where any difference or dispute arises between the operator and the telegraph-authority as to whether the operator has constructed, laid down or placed his electric supply-lines or other works, or worked his system, in contravention of sub-section (1), or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to <sup>1</sup>[the Central Government]; and <sup>1</sup>[the Central Government], unless <sup>2</sup>[it] is of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or works of the operator after the construction of such lines or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly:

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric supply-line so long as the course of the electric supply-line and the amount and nature of the energy transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

*Explanation.*—For the purposes of this section, a telegraph-line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through induction or otherwise, prejudicially interfered with by an electric supply-line or work or by any use made thereof.

Notice of  
accidents  
and inquiries.

33. <sup>3</sup>[(1) If any accident occurs in connection with the generation, transmission, supply or use of energy in, or in connection with, any part of the electric supply-lines or other works of any person, and the accident results or is likely to have resulted in loss of life or personal injury, such person shall give notice of the occurrence, and of any loss of life or personal injury actually occasioned by the accident, in such form and within such time and to such authorities as the <sup>4</sup>[Provincial Government] may, by general or special order, direct.]

(2) The <sup>4</sup>[Provincial Government] may, if it thinks fit, require any Electric Inspector, or any other competent person appointed by it in this behalf, to inquire and report—

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by, or in connection

<sup>1</sup> Subs. by the A. O. 1937 for "the L. G." The words "L. G." had been subs. for "G. G. in C." by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

<sup>2</sup> Subs. by Act 38 of 1920, s. 2 and Sch. I, for "he".

<sup>3</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 15, for the original sub-section.

<sup>4</sup> Subs. by the A. O. 1937 for "L. G.".

## (Part IV.—General.)

with, the generation, transmission, supply or use of energy,  
or

- (b) as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with.

34. (1) No person shall, in the generation, transmission, supply or use of energy, permit any part of his electric supply-lines to be connected with earth except so far as may be prescribed in this behalf or may be specially sanctioned by the <sup>1</sup>[Provincial Government].

Prohibition of connection with earth, and power for Government to interfere in certain cases of default

(2) If at any time it is established to the satisfaction of the <sup>2</sup>[Provincial Government]—

- (a) that any part of an electric supply-line is connected with earth contrary to the provisions of sub-section (1), or
- (b) that any electric supply-lines or other works for the generation, transmission, supply or use of energy are attended with danger to the public safety or to human life or injuriously affect any telegraph-line, or
- (c) that any electric supply-lines or other works are defective so as not to be in accordance with the provisions of this Act or of any rule thereunder,

the <sup>2</sup>[Provincial Government] may, by order in writing, specify the matter complained of and require the owner or user of such electric supply-lines or other works to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

*Administration and Rules.*

35. (1) The <sup>3</sup>[Central Government] may, for the whole or any part of <sup>4</sup>[the Provinces], and each <sup>2</sup>[Provincial Government] may, for the whole or any part of the province, by notification in the <sup>5</sup>[Official Gazette] <sup>6</sup>\* constitute an Advisory Board.

(2) Every such Board shall consist of a chairman and not less than two other members.

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G." which had been substituted for "G. G. in C." by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>3</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>4</sup> Subs. by the A. O. 1948 for "British India".

<sup>5</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>6</sup> The words "or the local official Gazette, as the case may be" rep by the A. O. 1937.

<sup>7</sup> The original sub-section (3) was rep. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 16.

## (Part IV.—General.)

<sup>1</sup>[(3)] The <sup>2</sup>[Central Government] or the <sup>3</sup>[Provincial Government], as the case may be, may, by general or special order,—

<sup>4</sup>[(a)] determine the number of members of which any such Board shall be constituted and the manner in which such members shall be appointed,]

<sup>5</sup>[(b)] define the duties and regulate the procedure of any such Board,

<sup>6</sup>[(c)] determine the tenure of office of the members of any such Board, and

<sup>7</sup>[(d)] give directions as to the payment of fees to, and the travelling expenses incurred by, any member of any such Board in the performance of his duty.

Appointment  
of Electric  
Inspectors.

36. (1) The <sup>2</sup>[Central Government] may, by notification in the <sup>8</sup>[Official Gazette], appoint duly qualified persons to be Electric Inspectors, and every Electric Inspector so appointed shall <sup>7</sup>[in relation to mines, oilfields and railways] exercise the powers and perform the functions of an Electric Inspector under this Act within such areas and subject to such restrictions as the <sup>2</sup>[Central Government] may direct.

(2) The <sup>3</sup>[Provincial Government] may, by notification in the <sup>8</sup>[Official Gazette], appoint duly qualified persons to be Electric Inspectors within such areas as may be assigned to them respectively ; and every Inspector so appointed shall <sup>7</sup>[except in relation to mines, oilfields and railways] exercise the powers and perform the functions of an Electric Inspector under this Act subject to such restrictions as the <sup>3</sup>[Provincial Government] may direct.

(3) In the absence of express provision to the contrary in this Act, or any rule thereunder, an appeal shall lie from the decision of an Electric Inspector to the <sup>2</sup>[Central Government] or the <sup>3</sup>[Provincial Government], as the case may be, <sup>9</sup>[or, if the <sup>2</sup>[Central Government] or the <sup>3</sup>[Provincial Government], as the case may be, by general or special order, so directs, to an Advisory Board].

Central  
Electricity  
Board.

<sup>10</sup>[36A. (1) A Board to be called the Central Electricity Board shall be constituted to exercise the powers conferred by section 37.

<sup>1</sup> The original sub-section (4) was re-numbered (3) by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 16.

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>4</sup> Ins. by Act I of 1922, s. 16.

<sup>5</sup> The original cls (a), (b) and (c) were re-lettered (b), (c) and (d) respectively by s. 16, *ibid.*

<sup>6</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>7</sup> Ins. by the A. O. 1937.

<sup>8</sup> Subs. by the A. O. 1937 for "local official Gazette".

<sup>9</sup> Ins. by Act I of 1922, s. 17.

<sup>10</sup> Ins. by the Indian Electricity (Amendment) Act, 1937 (10 of 1937), s. 3.

## (Part IV.—General.)

(2) The Central Electricity Board shall consist of <sup>1</sup>[thirteen members], namely:—

- (a) a chairman to be nominated by the <sup>2</sup>[Central Government] ;
- (b) one member to be nominated by each of the <sup>3</sup>[Provincial Governments] of Madras, Bombay, <sup>4</sup>[West Bengal], the United Provinces, <sup>5</sup>[East Punjab], Bihar, the Central Provinces <sup>6</sup>[and Berar], Assam <sup>7</sup>\* \* \* and Orissa ;
- (c) one member, holding office for a period of three years, to be nominated alternately by the <sup>8</sup>[Provincial Government] of Delhi and the <sup>9</sup>[Provincial Government] of Ajmer-Merwara ;
- (d) one member to be nominated by the Chief Commissioner of Railways ; and
- (e) one member to be nominated by the Chief Inspector of Mines.

(3) Any vacancy occurring in the Board, otherwise than by the expiry of the term of office of the member referred to in clause (c) of sub-section (2), shall be filled as soon as may be by a nomination made by the authority by whom the member vacating office was nominated.

(4) The Board shall have full power to regulate by by-laws or otherwise its own procedure and the conduct of all business to be transacted by it.

(5) The powers of the Central Electricity Board may be exercised notwithstanding any vacancy in the Board.]

37. (1) The <sup>9</sup>[Central Electricity Board] may make rules<sup>10</sup> for <sup>11</sup>[all the Provinces or any part thereof], to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of this Act.

Power for Board to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the form of applications for licenses and the payments to be made in respect thereof ;
- (b) regulate the publication of notices ;
- (c) prescribe the manner in which objections with reference to any application under Part II are to be made ;

<sup>1</sup> Subs. by the A. O. 1948 for " fifteen members ".

<sup>2</sup> Subs. by the A. O. 1937 for " G. G. in C.".

<sup>3</sup> Subs. by the A. O. 1937 for " Local Governments ".

<sup>4</sup> Subs. by the A. O. 1948 for " Bengal ".

<sup>5</sup> Subs. by the A. O. 1948 for " the Punjab ".

<sup>6</sup> Ins. by the A. O. 1937.

<sup>7</sup> The words " the North-West Frontier Province, Sind " rep. by the A. O. 1948.

<sup>8</sup> Subs. by the A. O. 1937 for " L. G.".

<sup>9</sup> Subs. by the Indian Electricity (Amendment) Act, 1937 (10 of 1937), s. 4, for " G. G. in C.".

<sup>10</sup> For the Indian Electricity Rules, 1937, see Gen. R. & O., Supplementary Vol. VI, p. 316. These Rules, though made by the G. G. in C., are to be deemed to have been made by the Central Electricity Board—see the Rules and Regulations Continuance Act, 1937 (24 of 1937).

<sup>11</sup> Subs. by the A. O. 1948 for " the whole or any part of British India ".

## (Part IV.—General.)

- (d) provide for the preparation and submission of accounts by licensees in a specified form ;
  - (e) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply and for the examination of the records of such tests by consumers ;
  - (f) provide for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy ;
  - (g) for the purposes of electric traction regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures or substances and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not ;
  - (h) provide for preventing telegraph-lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy ;
  - (i) prescribe the qualifications to be required of Electric Inspectors ;
  - (j) authorise any Electric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein and to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examinations and tests ;  
1\*
  - (k) authorise and regulate the levy of fees for any such testing or inspection and, generally, for the services of Electric Inspectors under this Act ;<sup>2</sup>[and
  - (l) provide for any matter which is to be or may be prescribed.
- (3) Any rules made in pursuance of clause (f) or clause (h) of subsection (2) shall be binding on the Crown.]

<sup>1</sup> The word " and " rep. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 18.

<sup>2</sup> Ins. by s. 18, *ibid.*

## (Part IV.—General.)

<sup>1</sup>[(4)] In making any rule under this Act, the <sup>2</sup>[Central Electricity Board] may direct that every breach thereof shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

38. (x) The power to make rules under section 37 shall be subject to the condition of the rules being made after previous publication. Further provisions respecting rules

X of 1897.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 37 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

\* \* \* \* \*

<sup>4</sup>[(3)] All rules made under section 37 shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

*Criminal Offences and Procedure.*

XLV of 1860.

39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code ; and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction. Theft of energy.

40. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. \* Penalty for maliciously wasting energy or injuring works.

41. Whoever, in contravention of the provisions of section 28, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees. Penalty for unauthorised supply of energy by non-licensees.

<sup>5</sup>42. Whoever—

(a) being a licensee, save as permitted under section 27 or section 51 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply ; or Penalty for illegal or defective supply or for non-compliance with order.

(b) being a licensee, in contravention of the provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of prov-

<sup>1</sup> Sub-section (3) was re-numbered (4) by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 13.

<sup>2</sup> Subs. by the Indian Electricity (Amendment) Act, 1937 (10 of 1937), s. 4, for "G. G. in C.".

<sup>3</sup> Sub-section (3) rep. by s. 5, *ibid.*

<sup>4</sup> The original sub-section (4) was re-numbered (3) by s. 5, *ibid.*

<sup>5</sup> In its application to Bombay, this section has been amended by the Indian Electricity (Bombay Amendment), 1946 (Bom. 18 of 1946), s. 4.

## (Part IV.—General.)

ing which shall lie on him, discontinues the supply of energy or fails to supply energy ; or

- (c) makes default in complying with any order issued to him under section 34, sub-section (2) ;

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

Penalty for illegal transmission or use of energy.

43. Whoever, in contravention of the provisions of section 30, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works, and for improper use of energy.

44. Whoever—

- (a) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours' notice in writing of his intention ; or
- (b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent ; or
- (c) maliciously injures any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering ; or
- (d) improperly uses the energy of a licensee ;

shall be punishable with fine which may extend to <sup>1</sup>[five hundred] rupees, and, in the case of a continuing offence, with a daily fine which may extend to <sup>2</sup>[fifty] rupees ; and <sup>3</sup>[if it is proved that any artificial means exist] for making such connection as is referred to in clause (a), or such communication as is referred to in clause (b), or for causing such alteration or prevention as is referred to in clause (c), or for facilitating such improper use as is referred to in clause (d), <sup>4</sup>[and that] the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, <sup>5</sup>[it shall be presumed, until the contrary

<sup>1</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 19, for "three hundred".

<sup>2</sup> Subs. by s. 19, *ibid.*, for "thirty".

<sup>3</sup> Subs. by s. 19, *ibid.*, for "the existence of artificial means".

<sup>4</sup> Subs. by s. 19, *ibid.*, for "shall, where".

<sup>5</sup> Subs. by s. 19, *ibid.*, for "be *prima facie* evidence".

## (Part IV.—General.)

is proved,] that such connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

45. Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both. Penalty for extinguishing public lamps.

46. Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to two hundred rupees. Penalty for negligently wasting energy or injuring works.

47. Whoever, in any case not already provided for by sections 30 to 46 (both inclusive), makes default in complying with any of the provisions of this Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees: Penalty for offences not otherwise provided for.

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency, and that the offender complied with the said provisions as far as was reasonable in the circumstances.

48. The penalties imposed by sections 39 to 47 (both inclusive) shall be in addition to, and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license, which the offender may have incurred. Penalties not to affect other liabilities.

49. The provisions of sections 39, 40, 44, 45 and 46 shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by, or of works belonging to, <sup>1</sup>[Central Government or any Provincial Government]. Penalties where works belong to Government.

50. No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same. Institution of prosecutions.

*Supplementary.*

51. Notwithstanding anything in sections 12 to 16 (both inclusive) and sections 18 and 19, the <sup>2</sup>[Provincial Government] may, by order in writing, for the placing of appliances and apparatus for the transmission of Exercise in certain cases of powers of telegraph-authority.

<sup>1</sup> Subs. by the A. O. 1948 for "any Government in British India" which had been subs. by the A. O. 1937 for "the Govt."

<sup>2</sup> Subs. by the A. O. 1937 for "L. G.", which had been subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 20, for "G. G. in C."



## (Part IV.—General.)

energy, confer upon any public officer<sup>1</sup> or licensee, subject to such conditions and restrictions (if any) as the <sup>2</sup>[Provincial Government] may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885, any XIII of 1885 of the powers which the telegraph-authority possesses under that Act, with respect to the placing of telegraph-lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

## Arbitration.

52. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as the <sup>3</sup>[Provincial Government] may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the <sup>4</sup>\* Arbitration Act, <sup>5</sup>[1940.]

X of 1940.

## Service of notices, orders or documents.

53. (1) Every notice, order or document by or under this Act required or authorised to be addressed to any person may be served by post or left,—

(a) where <sup>6</sup>[the Central Government or the Provincial Government] is the addressee, at the office of <sup>7</sup>[such officer as the <sup>8</sup>[Central Government] or the <sup>9</sup>[Provincial Government] as the case may be, may designate in this behalf];

\* \* \* \* \*

(b) where a local authority is the addressee, at the office of the local authority;

(c) where a company is the addressee, at the registered office of the Company or, in the event of the registered office of the Company not being in India, at the head office of the Company in India;

(d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description

<sup>1</sup> For the conferment of powers under this section on the Chief Commissioner of Delhi in connection with the construction of New Delhi, *see* Gen. R. and O. Vol. IV, p. 66.

<sup>2</sup> Subs. by the A. O. 1937 for "L. G." which had been subs. for "G. G. in C." by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 20.

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>4</sup> The word "Indian" rep. by the Repealing and Amending Act, 1940 (32 of 1940), s. 3 and Sch. II.

<sup>5</sup> Subs. by the Arbitration Act, 1940 (10 of 1940), s. 49 (2) and Sch. IV, for "1899".

<sup>6</sup> Subs. by the A. O. 1937 for "the Govt.".

<sup>7</sup> Subs. by Act I of 1922, s. 21, for "the Secretary in the Public Works Department".

<sup>8</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>9</sup> Cl. (aa), ins. by the A. O. 1937, rep. by the A. O. 1948.

*(Part IV.—General.)*

of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

54. Every sum declared to be recoverable by section 5, clause (f), section 6, sub-section (2), section 14, sub-section (2), clause (h), section 16, sub-section (2), section 18, sub-section (2) or sub-section (4), or section 26, sub-section (4), and every fee leviable under this Act, may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any moveable property belonging to such person.

Recovery of sums recoverable under certain provisions of Act.

55. The <sup>1</sup>[Provincial Government] may, by general or special order, authorise the discharge of any of its functions under section 13 or section 18 <sup>2</sup>[or section 34, sub-section (2),] or clause V, sub-clause (2), or clause XIII of the Schedule by an Electric Inspector.

Delegation of certain functions of Provincial Government to Electric Inspectors.

56. No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

Protection for acts done in good faith.

1 of 1894

57. (1) In section 40, sub-section (1), clause (b), and section 41, sub-section (5), of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electrical energy supplied, or to be supplied, by means of the work to be constructed.

Amendment of the Land Acquisition Act, 1894.

1 of 1894.

(2) The <sup>1</sup>[Provincial Government] may, if it thinks fit, on the application of any person, not being a company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the person were a company.

III of 1903.

58. (1) The Indian Electricity Act, 1903, is hereby repealed:

Repeals and savings.

Provided that every application for a license made and every license granted under the said Act shall be deemed to have been made and granted under this Act.

(2) Nothing in this Act shall be deemed to affect the terms of any license which was granted, or of any agreement which was made, by or with the sanction of the Government for the supply or use of electricity before the commencement of this Act.

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Ins. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 22.

*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license )*

### THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE

[See section 3, sub-section (2), clause (f).]

#### *Security and Accounts.*

Security for execution of works of licensee not being local authority.

I. Where the licensee is not a local authority, the following provisions as to giving security shall apply, namely:—

- (a) The licensee shall, within the period fixed in that behalf by his license or any longer period which the <sup>1</sup>[Provincial Government] may substitute therefor by order under section 4, sub-section (3), clause (b), of the Indian Electricity Act, 1910, before exercising any of the powers by the license conferred on him in relation to the execution of works, show, to the satisfaction of the <sup>1</sup>[Provincial Government], that he is in a position fully and efficiently to discharge the duties and obligations imposed upon him by the license throughout the area of supply.
- (b) The licensee shall also, within the period fixed in that behalf by his license, or any longer period which the <sup>1</sup>[Provincial Government] may substitute therefor by order under section 4, sub-section (3), clause (b), of the Indian Electricity Act, 1910, and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure to the satisfaction of the <sup>1</sup>[Provincial Government] such sum (if any) as may be fixed by the license or, if not so fixed, by the <sup>1</sup>[Provincial Government].
- (c) The said sum deposited or secured by the licensee under the provisions of this clause shall be repaid or released to him on the completion of the works or at such earlier date or dates and by such instalments, as may be approved by the <sup>1</sup>[Provincial Government].

Audit of accounts of licensee not being local authority.

II. Where the licensee is not a local authority, the following provisions as to the audit of accounts shall apply, namely:—

- (a) The annual statement of accounts of the undertaking shall, before being rendered under section 11 of the Indian Electricity Act, 1910, be examined and audited by such person as the <sup>1</sup>[Provincial Government] may appoint or approve

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

(The Schedule —Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)

in this behalf, and the remuneration of the auditor shall be such as the <sup>1</sup>[Provincial Government] may direct, and his remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the <sup>1</sup>[Provincial Government] shall approve, shall be paid by the licensee on demand.

- (b) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers and information requisite for that purpose, and afford to him and them all facilities for the proper execution of his and their duty.
- (c) The audit shall be made and conducted in such manner as the <sup>1</sup>[Provincial Government] may direct.
- (d) Any report made by the auditor, or such portion thereof as the <sup>1</sup>[Provincial Government] may direct, shall be appended to the annual statement of accounts of the licensee, and shall thenceforth form part thereof.
- (e) Notwithstanding the foregoing provisions of this clause, the <sup>1</sup>[Provincial Government] may, if it thinks fit, accept the examination and audit of an auditor appointed by the licensee.

III. The licensee shall, unless the <sup>1</sup>[Provincial Government] otherwise directs, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business. Separate accounts.

#### *Compulsory works and supply.*

IV. The licensee shall, within a period of three years after the commencement of the license, execute to the satisfaction of the <sup>1</sup>[Provincial Government] all such works as may be specified in the license in this behalf or, if not so specified as the <sup>1</sup>[Provincial Government] may, by order in writing issued within six months of the date of the commencement of the license, direct. Execution of work after commencement of license.

V. (1) Where, after the expiration of two years and six months from the commencement of the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the <sup>1</sup>[Provincial Government] or a local authority charged with the public lighting thereof, requiring the licensee Provisions as to laying down of further distributing mains.

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

(The Schedule.—*Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.*)

to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless,—

(a) where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract duly executed and with sufficient security binding themselves to take, or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee ; or

(b) where it is made by the <sup>1</sup>[Provincial Government] or a local authority, the <sup>1</sup>[Provincial Government] or local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this clause, or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the <sup>1</sup>[Provincial Government], and either decided by it or, if it so directs, determined by arbitration.

(3) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910 ; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

Requisition  
for supply to  
owners or  
occupiers in  
vicinity.

VI. (1) Where <sup>2</sup>[after distributing mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced] a requisition is made by the owner or occupier of any premises situate within <sup>3</sup>[the area of supply] requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition <sup>2</sup>[or within such longer period as the Electric Inspector may allow,] supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition :

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>2</sup> Ins. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 23.

<sup>3</sup> Subs. by s. 23, *ibid.*, for "one hundred yards from any distributing main".

*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)*

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it—

- (a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the <sup>1</sup>[Provincial Government], duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will produce, at current rates charged by the licensee, a reasonable return to the licensee, and
- (b) if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property:

Provided, secondly, that the licensee shall be entitled to discontinue such supply—

- (a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days after the service upon him of notice from the licensee requiring him so to do, or
- (b) if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner, so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or
- (c) if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or
- (d) if the owner or occupier makes any alterations of, or additions to, any electric wires, fittings, works or apparatus within such property as aforesaid, and does not notify the same to the

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<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)*

licensee before the same are connected to the source of supply, with a view to their being examined and tested ; <sup>1</sup>[but the licensee shall re-connect the supply with all reasonable speed on the cessation of the act or default or both, as the case may be, which entitled him to discontinue it] :

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises, and, where the owner or occupier has required a licensee to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month's notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service lines by which energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property: and

Provided, fourthly, that, <sup>2</sup>[if any requisition is made for a supply of energy and] the licensee can prove, to the satisfaction of an Electric Inspector,—

- (a) that <sup>3</sup>[the nearest distributing main] is already loaded up to its full current-carrying capacity, or
- (b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity,

the licensee may refuse to accede to the requisition for such reasonable period not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service line laid for the purpose of supplying in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service line or as to the sufficiency of the security offered by any owner or occupier, or as to the improper use of energy, or as to any alleged defect in any

<sup>1</sup> Ins. by the Indian Electricity (Amendment) Act. 1922 (1 of 1922), s. 23

<sup>2</sup> Subs. by s. 23, *ibid.*, for "in the event of any requisition being made for a supply of energy from any distributing main of which "

<sup>3</sup> Subs. by s. 23, *ibid.*, for "it "

*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)*

wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (r), the matter shall be referred to an Electric Inspector and decided by him.

(4) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(5) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910 ; and copies of the forms shall be kept at the office of the licensee and supplied free of charge to any applicant.

<sup>1</sup>[VII. The licensee shall, before commencing to lay down or place a service line in any street in which a distributing main has not already been laid down or placed, serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the service line so to be laid down or placed, twenty-one-days' notice stating that the licensee intends to lay down or place a service line, and intimating that, if within the said period the local authority or any five or more of such owners or occupiers require, in accordance with the provisions of the license, that a supply shall be given for any public lamps or to their premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the service line.] Further provisions as to laying of service lines

VIII. (r) Where <sup>2</sup>[after distributing mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced] a requisition is made by the <sup>3</sup>[Provincial Government] or by a local authority requiring the licensee to supply for a period of not less than seven years energy for any public lamps within the <sup>4</sup>[area of supply], the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy for such lamps in such quantities as the <sup>3</sup>[Provincial Government] or the local authority, as the case may be, may require. Supply for public lamps.

(2) The provisions of sub-clause (b) of the first proviso, of sub-clauses (c) and (d) of the second proviso, and of the third and fourth provisos to sub-clause (r) and the provisions of sub-clauses (2) and (3) of clause VI shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this clause as if the <sup>3</sup>[Provincial Government] or local authority were an owner or occupier within the meaning of those provisions.

<sup>1</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 24, for the original clause, as amended by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

<sup>2</sup> Ins. by s. 25, *ibid*

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

<sup>4</sup> Subs. by s. 25 of Act 1 of 1922, for "distance of one hundred yards from any distributing main".



*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)*

*Supply by bulk-licensees.*

Special provisions applying to supply by bulk-licensees.

IX. (1) Where, and in so far as, the licensee (hereinafter in this clause referred to as "the bulk-licensee") is authorised by his license to supply energy to other licensees for distribution by them (hereinafter in this clause referred to as "distributing-licensees") the following provisions shall apply, namely:—

- (a) any distributing-licensees within the bulk-licensee's area of supply may make a requisition on the bulk-licensee, requiring him to give a supply of energy and specifying the point, and the maximum rate per unit of time, at which supply is required, and the date upon which the supply is to commence, such date being fixed after the date of receipt of the requisition so as to allow an interval that is reasonable with regard to the locality and to the length of the electric supply-line and the amount of the plant required ;
- (b) such distributing-licensee shall, if required by the bulk-licensee so to do, enter into a written agreement to receive and pay for a supply of energy for a period of not less than seven years of such an amount that the payment to be made for the same at the rate of charge for the time being charged for such supply shall not be less than such an amount as will produce a reasonable return to the bulk-licensee on the outlay (excluding expenditure on generating plant then existing and any electric supply-line then laid down or placed) incurred by him in making provision for such supply ;
- (c) the maximum rate per unit of time at which a distributing-licensee shall be entitled to be supplied with energy shall not exceed what is necessary for the purposes for which the supply is required by him, and need not be increased except upon a fresh requisition made in accordance with the foregoing provisions ;
- (d) if any difference or dispute arises under this clause, it shall be determined by arbitration, and, in the event of such arbitration, the arbitrator shall have regard to the following amongst other considerations, namely:—
  - (i) the period for which the distributing-licensee is prepared to bind himself to take energy ;
  - (ii) the amount of energy required and the hours during which the bulk-licensee is to supply it ;
  - (iii) the capital expenditure incurred or to be incurred by the bulk-licensee in connection with the aforesaid supply of energy ;
 and

(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)

(iv) the extent to which the capital expended or to be expended by the bulk-licensee in connection with such supply may become unproductive upon the discontinuance thereof.

(2) Notwithstanding anything in sub-clause (1), the bulk-licensee shall give a supply of energy to any distributing-licensee within his area of supply applying therefor, even although the distributing-licensee desires to be supplied with only a portion of the energy required for distribution by him :

Provided that the distributing-licensee shall, if so required by the bulk-licensee, enter into an agreement to take such energy upon special terms (including a minimum annual sum to be paid to the bulk-licensee) to be determined, if necessary, by arbitration in the manner laid down in sub-clause (1) (d).

(3) The maximum price fixed by a license for energy supplied to a distributing-licensee shall not apply to any partial supply given under sub-clause (2).

(4) Every distributing-licensee, who is supplied with energy by a bulk-licensee and intends to discontinue to receive such supply, shall give not less than twelve months' notice in writing of such intention to the bulk-licensee :

Provided that, where the distributing-licensee has entered into a written agreement with the bulk-licensee to receive and pay for a supply of energy for a certain period, such notice shall be given so as not to expire before the end of that period.

### Charges.

X. 1\* \* \* \* \*

Methods of charging.

<sup>2</sup>[(1)] <sup>3</sup>\* \* \* Where the licensee charges by any method [approved by the <sup>5</sup>[Provincial Government] in accordance with section 23, sub-section (3), clause (c), of the Indian Electricity Act, 1910,] any consumer who objects to that method may, by not less than one month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply, and thereafter the licensee shall not, except with the consent of the consumer, charge him by another method :

IX of 1910

<sup>1</sup> The first part of the clause up to and including sub-clause (c) rep. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 26.

<sup>2</sup> The first, second and third provisos were re-numbered as sub-clauses (1), (2) and (3), respectively, by s. 26, *ibid.*

<sup>3</sup> The words "Provided, first, that", rep. by s. 26, *ibid.*

<sup>4</sup> Subs. by s. 26, *ibid.*, for "so approved by the L. G."

<sup>5</sup> Subs. by the A. O. 1937 for "L. G."

(*The Schedule.*—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)

<sup>1</sup>[(2)] \* \* \* Before commencing to supply energy through any distributing main, the licensee shall give notice, by public advertisement, of the method by which he proposes to charge for energy so supplied; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the <sup>3</sup>[Provincial Government], to the local authority (if any) concerned, and to every consumer of energy who is supplied by him from such distributing main.

<sup>1</sup>[(3)] \* \* \* If the consumer is provided with a meter in pursuance of the provisions of section 26, sub-section (1), of the Indian Electricity Act, 1910, and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee shall bear the expense of providing a new meter, or such other apparatus as may be necessary by reason of the new method of charging.

Maximum  
charges.

XI. Save as provided by clause IX, sub-clause (3), the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved by the <sup>3</sup>[Provincial Government], such maxima as the <sup>3</sup>[Provincial Government] shall fix on approving the method:

Provided, that, if, at any time after the expiration of seven years from the commencement of the license, the <sup>3</sup>[Provincial Government] considers \* \* \* that the maxima so fixed or approved as aforesaid should be altered, it <sup>4</sup>[shall refer the matter to an Advisory Board, and, if the Board recommends any alteration, may make an order in accordance with such recommendation], which shall have effect from such date as may be mentioned therein:

Provided, also, that, where an order in pursuance of the foregoing proviso has been made, no further order altering the maxima fixed thereby shall be made until the expiration of another period of five years.

Minimum  
charges

<sup>7</sup>[XIA. A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made.]

<sup>1</sup> See footnote 2 to clause X, *supra*.

<sup>2</sup> The words "Provided, secondly, that" rep. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 26.

<sup>3</sup> Subs. by the A. O. 1937 for "L. G."

<sup>4</sup> The words "Provided, thirdly, that" rep. by Act 1 of 1922, s. 26.

<sup>5</sup> The words "or is satisfied" rep. by s. 27, *ibid*.

<sup>6</sup> Subs. by s. 27, *ibid.*, for "may, after such inquiry (if any) as it thinks fit, make an order accordingly"

<sup>7</sup> This clause was ins. by s. 28, *ibid*.

*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)*

XII. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the <sup>1</sup>[Provincial Government] or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration.

Charge for supply for public lamps

### *Testing and Inspection.*

XIII. The licensee shall establish at his own cost and keep in proper condition such number of testing stations, situated at such places within reasonable distance from any distributing main, as the <sup>1</sup>[Provincial Government] may direct for the purpose of testing the pressure or periodicity of the supply of energy in the distributing main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as an Electric Inspector may approve, and shall supply energy to each testing station for the purpose of testing.

Licensee to establish testing stations and keep instruments for testing.

XIV. The licensee shall afford all facilities for inspection and testing of his works and for the reading, testing and inspection of his instruments, and may, on each occasion of the testing of his works or the reading, testing or inspection of any instruments, be represented by an agent, who may be present, but shall not interfere with the reading, testing or inspection.

Facilities for testing.

XV. On the occasion of the testing of any works of the licensee by an Electric Inspector reasonable notice thereof shall be given to the licensee; and the testing shall be carried out at such suitable hours as, in the opinion of the Electric Inspector, will least interfere with the supply of energy by the licensee, and in such manner as the Electric Inspector may think fit; but, except under the provisions of an order made in each case in that behalf by the <sup>1</sup>[Provincial Government], the Electric Inspector shall not be entitled to have access to, or interfere with, the works of the licensee at any points other than those at which the licensee himself has access to the same:

Testing of works

Provided that the licensee shall not be held responsible for any interruption or irregularity in the supply of energy which may be occasioned by, or required by the Electric Inspector for the purpose of, any such testing as aforesaid:

Provided, also, that the testing shall not be made in regard to any particular portion of the works oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the <sup>1</sup>[Provincial Government].

<sup>1</sup> Subs. by the A. O. 1937 for "L. G.".

*(The Schedule.—Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license.)*

*Plans.*

Plan of area of supply to be made and kept open for inspection.

XVI. (1) The licensee shall, after commencing to supply energy, forthwith cause a plan to be made of the area of supply, and shall cause to be marked thereon the alignment <sup>1</sup>[and, in the case of underground works, the approximate depth] below the surface of all his then existing electric supply-lines, street-distributing boxes and other works, and shall once in every year cause that plan to be duly corrected so as to show the electric supply-lines, street-distributing boxes and other works for the time being in position. The licensee shall also, if so required by an Electric Inspector, cause to be made sections showing the approximate level of all his existing underground works other than service lines.

<sup>2</sup>[(2) Every such plan shall be drawn to such scale as the <sup>3</sup>[Provincial Government] may require: provided that no scale shall be required unless maps of the locality on that scale are for the time being available to the public.

(3) Every such section shall be drawn to horizontal and vertical scales which shall be such as the <sup>3</sup>[Provincial Government] may require.]

(4) Every plan and section so made or corrected, or a copy thereof, marked with the date when it was so made or corrected, shall be kept by the licensee at his principal office or place of business within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and copies thereof shall be supplied on such terms and conditions as may be prescribed by rules under the Indian Electricity Act, 1910.

(5) The licensee shall, if required by an Electric Inspector and, where the licensee is not a local authority, by the local authority (if any) concerned, supply free of charge to such Electric Inspector or local authority a copy of every such plan or section duly corrected so as to agree with the original kept at the principal office or place of business of the licensee.

*Additional notice of certain works.*

Notice to Electric Inspector.

XVII. On the day next preceding the commencement of any such works as are referred to in section 13 of the Indian Electricity Act, 1910, the licensee shall, in addition to any other notices which he may be required to give, serve upon the Electric Inspector, or such officer as the <sup>3</sup>[Provincial Government] may appoint in this behalf for the area of supply, a notice in writing stating that he is about to commence the works, and the nature and position of the same.

<sup>1</sup> Subs. by the Indian Electricity (Amendment) Act, 1922 (1 of 1922), s. 29, for "and the approximate height above or depth".

<sup>2</sup> Subs. by s. 29, *ibid*, for the original sub-cl. (2) and (3).

<sup>3</sup> Subs. by the A. O. 1937 for "L. G.".

## INDIAN MUSEUM ACT, 1910.

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## THE SCHEDULE.

*(Preliminary. Incorporation of the Trustees.)*ACT X OF 1910.<sup>1</sup>

[18th March, 1910.]

## An Act to consolidate and amend the law relating to the Indian Museum.

WHEREAS it is expedient to consolidate and amend the law relating to the Indian Museum ; It is hereby enacted as follows:—

*Preliminary.*

Short title  
and com-  
mencement

1. (1) This Act may be called the Indian Museum Act, 1910.
- (2) It shall come into force on such <sup>2</sup>date as the <sup>3</sup>[Central Government], by notification in the <sup>4</sup>[Official Gazette], may direct.

*Incorporation of the Trustees.*

Constitution  
and incorpor-  
ation of the  
Trustees of  
the Indian  
Museum.

2. (1) The Trustees of the Indian Museum (hereinafter called the Trustees) shall be—
  - (a) the <sup>5</sup>[seven] persons for the time being performing the duties of the following offices, namely:—
    - (i) the Accountant General of <sup>6</sup>[West Bengal] ;
    - (ii) the Principal, Government School of Art, Calcutta ;
    - (iii) the Director, Geological Survey of India ;
    - <sup>7</sup>[(iv) the Director, Zoological Survey of India] ;
    - (v) the Director General of Archæology ; <sup>8</sup>\*
    - <sup>9</sup>[(vi) the Superintendent,, Archæological Section of the Museum ; and]
    - <sup>10</sup>[(vii)] the Officer in charge of the Industrial Section of the Museum ;
  - <sup>11</sup>[(b) four other persons to be nominated by the Central Government ;]
  - (d) one other person to be nominated by the Council of the Asiatic Society of Bengal ;
  - (e) one other person to be nominated by the Bengal Chamber of Commerce ;

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1909, Pt. V, p. 109 ; for Report of Select Committee, see *ibid.*, 1910, Pt. V, p. 65 ; and for Proceedings in Council, see *ibid.*, 1909, Pt. VI, p. 162, and *ibid.*, 1910, Pt. VI, pp. 91, 159 and 284.

<sup>2</sup> The 1st June, 1910, see Gen. R. & O., Vol. IV, p. 67.

<sup>3</sup> Subs. by the A. O. 1937 for " G. G. in C. ".

<sup>4</sup> Subs. by the A. O. 1937 for " Gazette of India ".

<sup>5</sup> Subs. by the Indian Museum (Amendment) Act, 1922 (17 of 1922), s. 2, for " six ".

<sup>6</sup> Subs. by the A. O. 1948 for " Bengal ".

<sup>7</sup> Subs. by Act 17 of 1922, s. 2, for the original sub-clause.

<sup>8</sup> The word " and " rep. by s. 2, *ibid.*

<sup>9</sup> Ins. by s. 2, *ibid.*

<sup>10</sup> The original subcl. (vi) was re numbered (vii) by s. 2, *ibid.*

<sup>11</sup> Subs. by the A. O. 1937 for the former paragraphs (b) and (c).

*(Incorporation of the Trustees. Property and powers of the Trustees.)*

- (f) one other person to be nominated by the British Indian Association, Calcutta;
- (g) one other person to be nominated by the Syndicate of the Calcutta University; and
- (h) three other persons to be nominated by the Trustees.

(2) The trustees shall be a body corporate, by the name of "The Trustees of the Indian Museum", with perpetual succession and a common seal, and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts, and to do all acts necessary for and consistent with the purposes of this Act.

(3) The nominated Trustees shall, save as herein otherwise provided, hold office for a period of three years:

Provided that the authority nominating a Trustee may extend his term of office for one or more like periods.

3. (1) The powers of the said body corporate may only be exercised so long and so often as there are nine members thereof. Minimum number of Trustees and

(2) The quorum necessary for the transaction of business at a meeting of the Trustees shall not be less than six. quorum.

4. If a nominated Trustee—

- (a) dies, or
- (b) is absent from the meetings of the Trustees for more than twelve consecutive months, or
- (c) desires to be discharged, or
- (d) refuses or becomes incapable to act, or
- (e) is appointed to perform the duties of any office specified in section 2, clause (a),

Power to appoint new Trustees.

the authority which nominated the Trustee may nominate a new Trustee in his place.

5. From the commencement of this Act the term of office of all persons appointed to be Trustees under the <sup>1</sup> Indian Museum Act, 1876, shall cease. Vacation of office by existing Trustees.

*Property and powers of the Trustees.*

6. (1) All the property, whether moveable or immoveable, which at the commencement of this Act is held by the Trustees of the Indian Museum constituted by the <sup>1</sup> Indian Museum Act, 1876, on trust for the purposes of the said Museum shall, together with any such property which may hereinafter be given, bequeathed, transferred or acquired for the said purposes, vest in the Trustees of the Indian Museum constituted by this Act on trust for the purposes of the said Museum: Property vested in or placed under the control of the Trustees.

Provided that the Trustees may expend the capital of any portion of such property which may consist of money on the maintenance, improve-

<sup>1</sup> Rep. by this Act, s. 17.



*(Properly and powers of the Trustees.)*

ment and enlargement of the collections deposited in, presented to or purchased for, the said Museum or otherwise for the purposes of the same as they may think fit.

(2) The Trustees shall have the exclusive possession, occupation and control, for the purposes of such trust, of the land specified in the schedule, including any buildings which may have been, or may hereafter be, erected thereon, other than those portions thereof which have been set apart by the Trustees for the records and offices of the Geological Survey of India.

7. Subject to the provisions of any bye-laws made in this behalf, the Trustees may, from time to time,—

- (a) deliver, by way of loan, to any person the whole or any portion of, or any article contained in, any collection vested in them under this Act;
- (b) exchange or sell duplicates of articles contained in any such collection and take or purchase, in the place of such duplicates, such articles as may in their opinion be worthy of preservation in the Museum;
- (c) present duplicates of articles contained in any such collection to other Museums in <sup>1</sup>[the Provinces]; and
- (d) remove and destroy any article contained in any such collection.

8. (1) The Trustees may from time to time, with the previous sanction of the <sup>2</sup>[Central Government], make bye-laws consistent with this Act for any purpose necessary for the execution of their trust.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the summoning, holding and adjournment of general and special meetings of the Trustees;
- (b) the securing of the attendance of Trustees at such meetings;
- (c) the provision and keeping of minute-books and account-books;
- (d) the compiling of catalogues;
- (e) the lending of articles contained in the collections vested in the Trustees;
- (f) the exchange and sale, and the presentation to other Museums in <sup>1</sup>[the Provinces], of duplicates of articles contained in such collections;
- (g) the removal and destruction of articles contained in such collections; and
- (h) the general management of the Museum.

9. Subject to such regulations and conditions as may be prescribed by them in this behalf, the Trustees shall appoint such officers and servants as may be necessary or proper for the care or management of the trust-

Power to Trustees to exchange, sell and destroy articles in collections.

Power to Trustees to make bye-laws.

Power to Trustees to appoint officers and servants.

<sup>1</sup> Subs. by the A. O. 1948 for "British India".

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C.".

(Property and powers of the Trustees. Duties of the Trustees. Supplemental Provisions.)

property, and may assign to such officers and servants such pay as they may think fit:

Provided that—

- <sup>1</sup>[(a) no officer shall be appointed without the approval of the Central Government; and]
- (b) no new office shall be created, and no salaries of officers shall be altered, without the previous sanction of the <sup>2</sup>[Central Government].

*Duties of the Trustees.*

10. (1) The Trustees shall furnish on or before the first day of December in each year—

Trustees to furnish annual reports and accounts.

- (a) to the <sup>3</sup>[Central Government] a report of their several proceedings for the previous financial year, and
- (b) to such auditor as the <sup>2</sup>[Central Government] appoints in this behalf. accounts of all moneys expended by the Trustees during the previous financial year, supported by the necessary vouchers.

(2) The Trustees shall cause such report and accounts to be published annually for general information.

11. (1) The Trustees shall cause every article in the collections in the said Indian Museum formerly belonging to the Asiatic Society of Bengal and all additions that may hereafter be made thereto otherwise than by purchase under section 6, to be marked and numbered and (subject to the provisions contained in sections 7 and 16) to be kept and preserved in the said Museum with such marks and numbers.

Collections of Asiatic Society to be kept distinguished in the Museum.

(2) An inventory of such additions shall be made by the said Society, one copy whereof shall be signed by the Trustees and delivered to the said Society, and another copy shall be signed by the Council of the said Society and delivered to the Trustees, and shall be kept by them along with the inventory delivered to the predecessors in office of the Trustees when the said collections were deposited in the said Museum.

12. All objects taken in exchange and articles purchased under section 7 and all moneys realised from sales made in accordance with the terms of the same section shall be held on trust and subject to powers and declarations corresponding as nearly as may be with the trusts, powers and declarations by this Act limited and declared.

Articles received in exchange or purchased and moneys realized from sale to be held on trust.

*Supplemental Provisions.*

13. All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of the Indian Penal Code; and, so far as regards their salaries, allowances and pensions, and their leave of

Officers under Act to be public servants and

XLV of 1860.

<sup>1</sup> Subs. by the A. O. 1937 for the original clause.

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>3</sup> Subs. by the A. O. 1937 for "G. of I.".

*(Supplemental Provisions. The Schedule.)*

subject to  
Civil Service  
Regulations.

absence from duty, they shall be subject to the rules which <sup>1</sup>\* \* \* \* \* would be applicable if their service was service under <sup>2</sup>[the Central Government].

Power to  
Trustees to  
keep collec-  
tions not  
belonging  
to them.

14. Notwithstanding anything hereinbefore contained, the Trustees may, if they think fit, with the previous sanction of the <sup>3</sup>[Central Government] and subject in each case to such conditions as <sup>4</sup>[it] may approve and to such rules as <sup>4</sup>[it] may prescribe, assume the custody and administration of collections which are not the property of the Trustees for the purposes of their trust under this Act, and keep and preserve such collections either in the Indian Museum or elsewhere:

Provided that, if the trust constituted by this Act is at any time determined, any such collections shall not by reason of their then being in the Indian Museum become the property of His Majesty.

Power to  
Trustees to  
part with  
certain pro-  
perty in their  
possession.

<sup>5</sup>[15. Subject to such conditions as the Central Government may approve, the Trustees may deliver possession of the whole or any part of the property described in the schedule to such person as that Government may appoint.]

Property in  
collections on  
determination  
of trust.

16. If the trust constituted by this Act is at any time determined,—

- (a) the collections and additions mentioned in section 11 shall become the property of the said Asiatic Society or their assigns, and
- (b) all the other collections then in the said Indian Museum shall, save as otherwise provided by section 14, become the property of His Majesty.

17. [Repeals.] *Rep. by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Sch. II.*

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### THE SCHEDULE.

*(See sections 6 and 15.)*

Land bounded—

on the north side by the premises No. 2, Sudder Street, and by Sudder Street;

on the west side by Chowringhee Road and by the premises No. 29, Chowringhee Road (occupied by the Bengal United Service Club);

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<sup>1</sup> The words "under the Civil Service Regulations for the time being in force" rep. by the A. O. 1937.

<sup>2</sup> Subs. by the A. O. 1937 for "Govt."

<sup>3</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>4</sup> Subs. by the A. O. 1937 for "he".

<sup>5</sup> Subs. by the A. O. 1937 for the original section.

*The Schedule.*—Concl'd.

on the south side by the premises No. 29, Chowringhee Road, by Kyd Street, and by the Premises No. 4, Chowringhee Lane, and

on the east side by the premises No. 15, Kyd Street, and the premises Nos. 4, 3, 2 and 1, Chowringhee Lane,

together with all buildings, roads and tanks existing or erected thereon, and all easements appertaining thereto.

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